S. HRG. 100-870

ELIGIBILITY OF CERTAIN FLAG SHIPS TO PARTICIPATE IN THE ODS PROGRAM

HEARING

BEFORE THE

SUBCOMMITTEE ON MERCHANT MARINE

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

UNITED STATES SENATE

ONE HUNDREDTH CONGRESS

SECOND SESSION

ON

S. 2510

TO MAKE CERTAIN UNITED STATES-FLAG VESSELS ELIGIBLE FOR OPERATING-DIFFERENTIAL SUBSIDIES UNDER THE MERCHANT MARINE ACT, 1936

JULY 12, 1988

Printed for the use of the
Committee on Commerce, Science, and Transportation

U.S. GOVERNMENT PRINTING OFFICE

89-377 O WASHINGTON : 1988

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

S261-10

89-377 O - 88 - 1

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ERNEST F. HOLLINGS, South Carolina, *Chairman*

DANIEL K. INOUYE, Hawaii
WENDELL H. FORD, Kentucky
DONALD W. RIEGLE, JR., Michigan
J. JAMES EXON, Nebraska
ALBERT GORE, JR., Tennessee
JOHN D. ROCKEFELLER IV, West Virginia
LLOYD BENTSEN, Texas
JOHN F. KERRY, Massachusetts
JOHN B. BREAUX, Louisiana
BROCK ADAMS, Washington

JOHN C. DANFORTH, Missouri
BOB PACKWOOD, Oregon
NANCY LANDON KASSEBAUM, Kansas
LARRY PRESSLER, South Dakota
TED STEVENS, Alaska
ROBERT W. KASTEN, JR., Wisconsin
PAUL S. TRIBLE, JR., Virginia
PETE WILSON, California
JOHN MCCAIN, Arizona

RALPH B. EVERETT, *Chief Counsel and Staff Director*
WALTER B. MCCORMICK, JR., *Minority Chief Counsel and Staff Director*

SUBCOMMITTEE ON MERCHANT MARINE

JOHN B. BREAUX, Louisiana, *Chairman*

DANIEL K. INOUYE, Hawaii
LLOYD BENTSEN, Texas
BROCK ADAMS, Washington

TED STEVENS, Alaska
PAUL S. TRIBLE, JR., Virginia

CONTENTS

	Page
Opening statement by Senator Breaux	1
Opening statement by Senator Inouye	2
Opening statement by Senator Wilson	4
Opening statement by the Chairman	5
Text of S. 2510	7

LIST OF WITNESSES

Amoss, W. J., Jr., chairman and CEO, Lykes Bros. Steamship Co., Inc	34
Letter of July 21, 1988	36
Collar, Leo L., president, Crowley Maritime Corp	66
Prepared statement	68
Gaughan, Hon. John A., Administrator, MarAd; accompanied by Richard Bowman, Associate Administrator	8
Letters of:	
July 27, 1988	22
August 15, 1988	22
July 25, 1988	26
Hearn, George, senior vice president, Waterman Steamship Corp	33
Hintz, Robert L., chairman and CEO, Sea-Land Corp	27
Prepared statement	30
Johnsen, Erik, president, Central Gulf Lines, Inc	62
Prepared statement	64
Leback, Warren G., senior vice president, vessel operations, Puerto Rico Marine Management, Inc.; accompanied by Randolph G. Flood, Randolph Flood & Associates; and Amy Loeserman Klein, counsel	69
Prepared statement	71
Parks, Richard V., president, Farrell Lines, Inc	38
Rhein, Timothy J., president and chief operating officer, American President Lines, Ltd	52
Prepared statement	55
Stocker, John J., president, Shipbuilders Council of America	73
Prepared statement	76

ELIGIBILITY OF CERTAIN FLAG SHIPS TO PARTICIPATE IN THE ODS PROGRAM

TUESDAY, JULY 12, 1988

U.S. SENATE,
SUBCOMMITTEE ON MERCHANT MARINE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The subcommittee met at 10:05 a.m. in Room SR-253, Russell Senate Office Building, Hon. John B. Breaux [chairman of the subcommittee] presiding.

Staff members assigned to this hearing: Barry Kalinsky, staff counsel; and Bob Eisenbud, minority professional staff member.

OPENING STATEMENT BY SENATOR BREAUX

Senator BREAUX. The subcommittee will please come to order.

Good morning, everyone. This morning's hearing is to determine whether certain U.S. flag foreign-built containerships owned and operated by Sea-Land Services, Inc., should be eligible to participate in the operating-differential subsidy, ODS, program.

I welcome our witnesses this morning and look forward to receiving your testimony.

The ODS program, of course, was authorized in the Merchant Marine Act of 1936 in response to the Congress' recognition that the Federal government needed to provide a means of offsetting the higher costs of U.S. operators in order to foster a U.S. maritime industry capable of competing with the foreign flag operators. The program is designed to meet the foreign flag competition on our essential trade routes by placing the operation of the U.S. flag vessels on a cost parity with those of their foreign flag competitors. Under present law, only U.S.-built vessels may participate in the ODS program unless Congress legislates an exception on making a foreign-built vessel eligible. Nevertheless, in the last eight years Congress has on two separate occasions enabled a limited number of foreign-built U.S. flag vessels constructed by subsidized operators to participate in the program.

Yet, despite Congressional promotional efforts, the United States carriers' cost structure has made it increasingly difficult for them to compete internationally and the U.S. flag share of carriage of our trade on a tonnage basis has declined to approximately a meager five percent.

Furthermore, the number of oceangoing vessels in our fleet has declined from 840 in 1970 to approximately 360 vessels today. Projections indicate the fleet will shrink to 220 vessels by the turn of the century.

ODS and ODS reform have presented perplexing and challenging questions to the industry, to the Congress, and to the Administration. Regrettably, to date the answers to these questions have avoided all segments of the maritime community. However, I still believe comprehensive ODS reform is absolutely essential in order for the United States to maintain a viable merchant marine to serve as our fourth arm of defense.

Several bills attempting to solve the ODS program have been introduced in the 100th Congress, but a consensus cannot be formed on any of these initiatives as well. Therefore, some members of the industry feel that they have no choice but to seek independent action to confront immediate situations.

Whatever the approach may be, we must not lose sight of the twofold objectives of the ODS program: to promote the development of the U.S. merchant marine for national defense purposes; and to carry a substantial portion of our country's foreign commerce.

I think it is absolutely imperative to ensure that any modification or addition to the program should comport with those objectives set forth by the Congress.

With that, I would recognize my distinguished colleague, the principal author of the legislation, the Senator from Hawaii, Senator Inouye, for any comments he may make.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. Thank you very much, Mr. Chairman. I wish to thank you for scheduling hearings so expeditiously on this measure.

As pointed out by you, Mr. Chairman, this bill would make twelve existing U.S. flag foreign-builtcontainerships eligible to participate in the ODS program. These vessels are now and will continue to be in the essential trans-Pacific trades of the United States, and they are owned and operated by Sea-Land, a U.S. company.

Currently the two major U.S. flag companies operating in the essential trans-Pacific trades of the United States are APL and Sea-Land, and these two companies must compete with about 30 foreign flag operators who operate over 150 liner vessels.

In 1988, MarAd determined that APL needed $62.4 million in ODS in order to operate on a cost parity with the vessels of its foreign flag competitors, and I have been assured that in 1989 it will be necessary to increase that subsidy to $66.6 million. In the past few years, because of the heavy overtonnaging in these trades and the consequent depression of rates, I believe it is fair to conclude from APL's financial statements that the company would have shown yearly losses if it were not for ODS.

During this same period Sea-Land was competing against the same foreign flag operators in the essential trans-Pacific trades, at a substantial disadvantage because it had no ODS and its operating costs were therefore greater.

Sea-Land vessels were, of course, not eligible to participate in the ODS program because they were foreign built; and only U.S.-built vessels may participate, unless Congress legislates an exception making foreign built vessels eligible. On two occasions, in 1981 and 1983, Congress did precisely that, because it felt the national interest which justifies the expenditure of federal funds for operating subsidy required it. Namely, the development of a strong U.S. merchant marine: for national defense; and, to carry a substantial portion of our country's foreign commerce.

While the exception enacted in 1983, was for the benefit of two specific U.S. liner companies, its justification was the national interest in a strong merchant marine. Similarly, enactment of S.2510, will benefit a particular U.S. liner company, but it is the same national interest consideration which justifies it.

There are certain other characteristics of S .2510 which I believe are also worthy of mention.

It does not require MarAd to enter into any ODS contracts. It merely makes 12 vessels eligible, should MarAd decide ODS is necessary to achieve the purposes and policies of the Merchant Marine Act.

It would not disadvantage APL or any other U.S.-flag operator. ODS is necessary to meet foreign-flag competition It would not deprive U.S. shipyards of any work. These 12 vessels are now in operation and are about seven years old.

It would not add or detract from the U.S. liner tonnage currently available to carry government preference cargo. In fact, it will assist the operators now carrying such cargo because an amendment I intend to offer will preclude these vessels from retaining ODS earnings to the extent they carry either premium preference cargo or military cargo.

It is neither a substitute for nor a detraction from the need for ODS reform legislation. That need and its urgency remains.

There are certain characteristics of this measure which I believe are worthy of mention. First, it does not require MarAd to enter into ODS contracts. It merely makes twelve vessels eligible should MarAd decide ODS is necessary to achieve the purposes and policies of the Merchant Marine Act.

Second, it would not disadvantage APL or any other U.S. flag operator. ODS is necessary to meet foreign flag competition.

Third, it would not deprive U.S. shipyards of any work, because these twelve vessels are now in operation and I believe they are about seven years old.

Fourth, it would not add or detract from the U.S. liner tonnage currently available to carry government preference cargo. In fact, I believe it will assist the operators now carrying such cargo, because an amendment I intend to offer will preclude these vessels from retaining ODS earnings to the extent they carry either premium preference cargo or military cargo, the so-called double dipping amendment.

And finally, it is neither a substitute nor a detraction from the need for ODS reform legislation, because I believe that that need and its urgency still remains.

Because the bill is very limited in scope, essential to the policies and purposes of the Merchant Marine Act, and since I do not believe it disadvantages any competing U.S. flag line operator, I would hope that the committee would be able to act expeditiously with the support of the U.S. maritime industry.

Once again, I thank you, Mr. Chairman, for handling this matter so expeditiously. I am most grateful.

Senator BREAUX. I thank the former chairman for his comments.

The Senator from California, Senator Wilson.

OPENING STATEMENT BY SENATOR WILSON

Senator WILSON. Thank you, Mr. Chairman. I too thank you for holding this important hearing today on S. 2510, legislation which would have a major effect on the operating-differential subsidy program.

I have a number of concerns about this legislation, which I hope will be answered by this morning's hearing. S. 2510 would allow twelve foreign-built U.S. flag cargo vessels to be designated as eligible for ODS payments. But the only vessels that appear to me to meet the bill's specifications are 12 vessels owned by Sea-Land and operated in the Pacific, which is the same area in which American President Lines operates its fleet.

This bill raises two serious questions. First, when Senator Inouye introduced this legislation he stated in the Congressional record that the bill is neither "a substitute for nor a detraction from the need for ODS reform legislation."

And in his opening statement this morning, Senator Inouye indicates that he does not regard this bill as a substitute for the reform required. And I quite agree, because this bill serves only one carrier, Sea-Land. And passage of S. 2510 has the potential either to obviate the desire of the committee, notwithstanding Senator Inouye's stated intentions to the contrary, to deal with the very difficult problem of ODS reform, or else to convince the committee to pursue a two-track formula, which apparently is what the Senator intends, considering S. 2510 now and attempting at some point in the future more inclusive ODS reform.

I do not believe that either option is in the best interests of the American merchant marine, and I frankly doubt that, if S. 2510 is passed there will be the kind of early attention on the ODS problem that is required.

Second, we all agree that any legislation reported by this committee should be fair to all interested parties. This legislation must be examined very closely, as it appears to be special interest legislation aimed primarily for Sea-Land's benefit, and very possibly at the expense of APL.

And I think, contrary to the Senator from Hawaii's expectation, you will hear from APL this morning that they regard it as very much prejudicial to their operation and as basically unfair to them.

And I think we must ask whether this bill enhances the overall position of the American merchant marine. Does this bill actually level out the playing field or does it create an imbalance?

I am sure that American President Lines believes the latter, and I believe that its concerns are valid and merit serious consideration by the committee. As APL is based in California and has a stellar record in American merchant history, I look forward to working with them and with other carriers to ensure that any legislation approved by the committee guarantees fairness to all concerned.

Finally, Mr. Chairman, the lack of testimony from Great Atlantic & Pacific Shipping Corporation, the firm crafted to acquire Waterman Marine Corporation and Farrell Lines, Incorporated, leaves a very large hole in this hearing record.

The proposed charter scheme involving A&P, the two firms I previously mentioned, and Sea-Land merits considerable attention by this committee, as it will have an enormous impact on shipping competition in the Pacific. How would passage and implementation of this bill be affected by the A & P deal, which is still in the process of unfolding?

Again, Mr. Chairman, thank you for holding the hearing. It is timely. I look forward to the testimony, and I am eager to work with you and any other members of the committee on this issue.

Senator BREAUX. I thank the Senator from California for his statements.

I have a statement that the Chairman, Senator Hollings, would like to have included in the record.

[The statement and bill follow:]

OPENING STATEMENT BY THE CHAIRMAN

I wish to commend the distinguished Subcommittee Chairman for scheduling hearings so promptly on this important legislation.

Title I of the Merchant Marine Act of 1920 affirmatively states, in part, that it is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine sufficient to carry its domestic waterborne commerce and a substantial portion of the waterborne foreign commerce of the U.S. and also capable of serving as a naval and military auxiliary in time of war or national emergency. In order to comply with Title I and foster a strong merchant marine, Congress, in the Merchant Marine Act of 1936, established the ODS program. The 1936 Act authorizes the payment of ODS in order to meet foreign flag competition and to transport U.S. foreign commerce in our essential trade routes between American and foreign ports. Currently 81 liner and 23 bulk vessels participate in the ODS program at a cost of approximately $250 million per year to the federal government.

However, despite our maritime promotional programs, we have declined from the world's foremost maritime power to one that now may be adequate to meet our needs in time of war. For example, in 1975, there were 19 major U.S.-flag liner companies serving almost every essential trade route in foreign commerce; today there are six, operating fewer ships than they employed in 1975.

The Commission on Merchant Marine and Defense may have discovered one reason for the rapid decline of our fleet when they noted that the current ODS program

simply does not provide sufficient operating flexibility in a changing market, and lacks incentives for cost efficiency that would help to make the U.S.-flag fleet competitive in the world market.

The legislation before the Committee raises some interesting questions in regard to the current ODS program as well as the reform of the ODS program. For instance, the Committee must consider:

—whether equitable or other considerations warrant the eligibility of U.S.-flag, foreign-built container ships in the ODS programs;

—whether this type of legislation is establishing or furthering a precedent not contemplated for the ODS program by the Merchant Marine Act of 1936;

—whether enactment of this legislation will require additional appropriations for the ODS program.

In answering these questions, we must ensure that any steps to rehabilitate the maritime industry are consistent with the policy goals included in the Merchant Marine Acts of 1920 and 1936.

I welcome our witnesses to the Committee and look forward to receiving their testimony.

II

100TH CONGRESS
2D SESSION

S. 2510

To make certain United States-flag vessels eligible for operating-differential subsidies under the Merchant Marine Act, 1936.

IN THE SENATE OF THE UNITED STATES

JUNE 14 (legislative day, JUNE 13), 1988

Mr. INOUYE (for himself and Mr. STEVENS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To make certain United States-flag vessels eligible for operating-differential subsidies under the Merchant Marine Act, 1936.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an operator of United States-flag liner vessels which has taken delivery from a United States shipyard of new United States-built liner vessels that were introduced into service within two years preceding the date of enactment of this Act may, within thirty days after such date of enactment, designate in accordance with the provisions of this Act not more than twelve existing United States-flag foreign-built

vessels which it is currently operating. The vessels so designated shall be deemed to have been United States-built for purposes of title VI of the Merchant Marine Act, 1936 (46 App. U.S.C. 1171 et seq.), except section 607 of that Act (46 App. U.S.C. 1177). No vessel shall be eligible for such designation unless it is not less than 20,000 deadweight tons, is not more than ten years of age, and has been documented continuously under United States flag since delivery and for more than three years. The operator shall promptly notify the Secretary of Transportation of the designations it has made pursuant to this Act.

Senator BREAUX. I would like to welcome as our lead-off witness who will resolve this problem for us with his enlightened testimony this morning, we welcome Hon. John Gaughan and his associate. John, we are glad to have you back and look forward to your testimony.

STATEMENT OF HON. JOHN A. GAUGHAN, ADMINISTRATOR, MARITIME ADMINISTRATION, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY RICHARD BOWMAN, ASSOCIATE ADMINISTRATOR

Mr. GAUGHAN. Mr. Chairman, thank you for that vote of confidence.

We have submitted a statement for the record. I would like to summarize that. It is fairly short and to the point, Mr. Chairman.

I am accompanied today by Mr. Richard Bowman, the Associate Administrator for Maritime Aids, and we appreciate the opportunity to comment on S. 2510, a bill that, as you pointed out, would qualify twelve ships for ODS.

Mr. Chairman, over the past year I have testified before the Congress stating the Administration's commitment to permit new ODS contracts as part of an overall ODS reform bill. We presented the Administration's reform bill on October 21st of 1987.

It has been introduced in the House as H.R. 3537 and hearings were held by the House in March of 1988.

The desire by Sea-Land to qualify these foreign-built ships for ODS is another indication of that company's belief that, even with modern and cost efficient ships, it cannot compete internationally without subsidy. Clearly, enactment of this bill would remove a major obstacle to

Sea-Land's eventually receiving ODS, either through new contracts or contracts received through the acquisition of the assets of other U.S. flag liner operators.

As you well know, we strongly believe that all subsidized operators should be allowed to acquire their vessels in the world market. This Administration has repeatedly proposed legislation allowing worldwide acquisition of ships by subsidized operators.

Most recently, the Administration has proposed it as an integral component in the Administration's ODS reform bill. We strongly support enactment of worldwide acquisition authority within the broader ODS reform framework. Unfortunately, S. 2510 falls short of what is needed, both in terms of worldwide acquisition authority and in terms of overall ODS reform.

The bill does not provide any currently subsidized operators with the authority to acquire ships in the world market, nor does it include any of the other broad-based reforms contained in the Administration's bill that we believe are necessary to make the industry more competitive in the world market.

Essential components of that program are much-needed regulatory reform, worldwide acquisition of cost competitive vessels, and cost reforms in the present contracts. Only legislation encompassing all of these features would justify our consideration of ODS for currently unsubsidized operators.

We appreciate the announced intention to amend the bill to eliminate the payment of ODS for the carriage of premium-rated civilian and military preference cargoes, an element included in the Administration's bill. However, the provision is clearly too limited to constitute by itself meaningful cost reform.

Regrettably, the various segments of the industry have been unable to resolve their differences on the critical issue of ODS reform and arrive at a reasonable compromise on a reform bill which the Administration can support. One major stumbling block has been the efforts to link the problems of the shipbuilding industry with those of the operating industry.

The lack of agreement among the various segments of the industry is a principal reason for the special interest legislation we are addressing today.

Mr. Chairman, I appreciate the fact that the proposed bill only confers ODS eligibility on the vessels in question and that the award of ODS will remain at the discretion of the Secretary of Transportation. However, without legislation that would provide comprehensive ODS reform covering both current ODS recipients and operators who are not now receiving ODS, the award of new ODS contracts to currently unsubsidized operators cannot be justified.

I wish I could be more positive with regard to the proposed bill. Unfortunately, it clearly fails to meet the broad objectives of the Administration on ODS reform. For that reason, the Administration opposes enactment of S. 2510 and urges the committee to refocus its attention on overall ODS reform.

That concludes my statement. I will be glad to answer any questions that you may have, sir.

Senator BREAUX. Thank you, Mr. Gaughan, for your statement.

You call the legislation special interest legislation, and that the Administration opposes it. Sea-Land and those that support it would argue that we did this before in 1981 and 1983 for a special purpose and it was special interest then.

Those companies that oppose this special interest, some benefited from that special interest legislation in 1981 and 1983. So I have got companies out there who are for the special interest in 1981 and 1983, against the special interests in 1988.

Those that were for the special interest in 1988 may have opposed the special interests in 1981 and 1983. It is not a little bit confusing; it is a whole lot confusing.

Is there any difference in principle from what we did in 1981 and 1983 and what is being attempted to be done in this legislation in 1988?

Mr. GAUGHAN. My recollection, Mr. Chairman, going back to those other actions, is that there was a structural difference in that the 1981 section 615 action, I believe was on an appropriations bill and provided a temporary window that went beyond just qualifying vessels of a single company.

There no doubt were actions—and I am not sure of the time frame, whether it was 1981 or 1983—that provided specific relief to other companies.

Senator BREAUX. Some would point out, too, that in the earlier effort by the Congress the ability to acquire foreign built vessels and get ODS, that that was required by the Congress and then the companies pursuant to that authority went out and made a transaction to build foreign, whereas here, what they are doing is acquiring the ships and then coming in and trying to get it approved.

Is that a distinguishable difference or is that a factual difference that does not make any difference with regard to the principle that we are talking about? Or does any of this matter?

Mr. GAUGHAN. I think it makes this kind of a difference. The fact that these ships are in existence and are older than three years, so they are qualified and are ready to carry preference cargo, and are involved in a trade and will continue in it, is certainly different than acquiring the authority and then going out and building the vessel, which has been a continuing concern to the American shipbuilding industry. So it probably is both a factual difference and a difference in principle, sir.

Senator BREAUX. You also correctly point out that the legislation only confers ODS eligibility, that the Maritime Administration through the Department of Transportation still would have to review the applications. But you further state something I think is fairly significant, because you point out that without legislation that would provide a comprehensive ODS reform, the award of ODS to a currently unsubsidized operator cannot be justified.

To me that sounds like you are saying that if an application is submitted pursuant to this type of legislation that your recommendation would be that it would not be granted. Am I reading that correctly?

Mr. GAUGHAN. Mr. Chairman, the Administration as a matter of policy in 1982 announced that it would honor existing contracts, but it would not enter into new ODS contracts. That policy remains in effect.

We have proposed legislation that recognizes the need to reform the program and, if you will, to t everyone at the starting gate at the same time. We are not backing away from that commitment, but we would like to try to pursue comprehensive reform, rather than piecemeal attempts such as this, so that we can in fact get those operators still in the industry to the starting gate at the same time, so they can go out and compete against their foreign competition.

Senator BREAUX. I appreciate that answer, but it really does not answer my question. You point out that the Administration's position is no new contracts with ODS subsidy.

The companies will argue that these are not new contracts, that they are merely acquiring existing contracts and these are not therefore new contracts; it is an asset of a company that has been acquired, therefore you have an obligation to approve ODS under the existing contracts.

Regarding your statement, where you point out that it merely makes them eligible and you say "the award of ODS to a currently unsubsidized operator could not be justified."

Now, those are existing ODS contracts that they have acquired. Is the position of the Maritime Administration that in the absence of comprehensive reform that you would not be in a position to approve these ODS contracts as a matter of principle?

Mr. GAUGHAN. Sir, I think that question turns on what you mean by new contracts. In view of the issues being raised in this hearing and the press reports of the formation of the Great Atlantic & Pacific involving the acquisition or transfer of existing authorities, I will try to address your question as clearly as I can.

We have not made the necessary reviews and approvals of that deal, but I think what you are saying to me is that there are authorities that are being moved from one company to another, and is it the position of the Administration that the mere fact that they have moved to another company may now mean that they will not be considered for ODS?

I would have to say, that is not the case, sir. We have had numerous situations where, in the sale and transfer of companies, one of the assets has been operating authorities, which have been subject to the various statutory reviews that have to be met, such as the competition standard. These authorities have, in fact, been approved and transferred for use by another company.

Senator BREAUX. My last question on this because I think it's very important, does the MarAd Administration then look at these acquired existing ODS contracts which would now be owned by a new corporate entity, as new ODS contracts when they come in for a request eligibility for a subsidy or existing ODS contracts? Because your policy on new ODS contracts is there are to be no new ODS contracts. Or how you look at these existing contracts, newly acquired by a new entity?

Mr. GAUGHAN. The fact that a contract has been quote, newly acquired by another entity, from my standpoint does not make that a, quote, new ODS contract sir.

Senator BREAUX. The Senator from Hawaii.

Senator INOUYE. Thank you very much. If my recollection is correct, in 1981 by amendment we opened the window for two years to make foreign-built vessels elegible to get ODS, because construction differential subsidies were not available at that time. And several operators took advantage of this, and in fact one operator did, but didn't build but sold the build-foreign permission he redeveloped from MarAd. And, but in 1963 they opened the window again for a year because one of the operators that wanted to receive the benefits in in 1981 did not quite make it, so in 1983 Congress opened it up again for that operator—Lykes—and for American President Lines. Isn't that correct?

Mr. GAUGHAN. That is correct, Senator.

Senator INOUYE. And at that time, in 1981, it was opened to one and all and did Sea-Land take advantage of it?

Mr. GAUGHAN. The 1981 legislation applied to existing ODS operators or those applying for ODS. Sea-Land did not fall into either category. Further, Sea-Land did not have a need for that sir, because as an unsubsidized carrier they could acquire their vessels worldwide without any approval required from the Maritime Administration. I do not have Sea-Land's fleet breakout in front of me, but I believe the D-9's were built in the early 1980's. They are certainly no older than that.

So they were involved in the construction of these diesel powered vessels, although they did not require an affirmative approval from the agency.

Senator INOUYE. Under the 1981 and 1983 laws, Congress did not provide ODS, it was up to your agency upon hearing, etc. to determine whether ODS was justified.

Mr. GAUGHAN. That is correct, Senator, although I would add that no hearings were involved in these cases.

Senator INOUYE. And I think you have to decide whether such payments would unduly prejudice or disadvantage other shipping lines, is that correct?

Mr. GAUGHAN. That is precisely correct, sir.

Senator INOUYE. Now is not that what this measure provides also?

Mr. GAUGHAN. Yes sir.

Senator INOUYE. We do not say that Sea-Land or any company will receive ODS. It will be up to your agency to decide whether such subsidies would be justified and whether such subsidies would prejudice or disadvantage any other operator, is not that correct?

Mr. GAUGHAN. That is correct, sir.

Senator INOUYE. So what is the difference between S. 2510 in the 1981 and 1983 measures?

Mr. GAUGHAN. I think, Senator, the difference is not necessarily in the mechanics or the specifics of the legislation, but rather it is in the circumstance in which it arises. The administration has sponsored a bill to get comprehensive ODS reform.

I guess I would liken it to situations that I face quite often in international negotiations where there are individual elements of that negotiation that both sides are striving for, but neither side is going to necessarily agree to a particular element until the whole package is completed.

That is, in essence, the position I think I find myself in. I would like to try to work with the Committee in developing a comprehensive reform package that would include the elements of S. 2510, because what is accomplished by this bill is also accomplished in the administration's ODS reform package.

Senator INOUYE. If Sea-Land, upon passage of this measure, should submit an application for ODS would this provision permit operators who feel prejudiced or disadvantaged to come before MarAd and oppose it?

Mr. GAUGHAN. Oh, yes, sir. Section 605(c) is there precisely for that purpose, to have the competitive impact reviewed and an opportunity for others to comment on it.

Senator INOUYE. And in fact they can still appeal your decision if it is not in their favor, isn't that correct, they can go to the courts?

Mr. GAUGHAN. As has been my experience, just about any Maritime subsidy board decision ends up in the courts in one way or another. That's correct, sir.

Senator INOUYE. In that sense, there is a level playing field, isn't there?

Mr. GAUGHAN. Well certainly the legislation does not remove any of the procedural safeguards or requirements that any applicant would face, that is correct sir.

Senator INOUYE. Do you believe that Sea-Land is at wage cost parity with foreign flag operators, because it does not presently receive ODS?

Mr. GAUGHAN. Senator, I would not have those numbers in front of me. But, my instincts tell me that, while Sea-Land has a very economical wage package, they are not at cost parity with their foreign competition.

Senator INOUYE. Would the national interest of this country suggest that something should be done to bring about a change in this situation?

Mr. GAUGHAN. Senator, we have recognized that it is in the national interest to have a reform of the ODS system, and we are supporting legislation to that effect.

Senator INOUYE. You have worked with this committee in this Congress for some time now. Do you believe that there is time remaining this year to come forth with a major ODS reform bill?

Mr. GAUGHAN. I believe that, if the industry could come together, it is absolutely doable if we all committed to it.

Senator INOUYE. What is the probability of the industry coming together at this time?

Mr. GAUGHAN. Well, if history is any gauge, Senator, I would not bet any money on it.

89-377 0 - 88 - 2

Senator INOUYE. So if Sea-Land is to receive any relief at this time and get a level playing field, this is the vehicle?

Mr. GAUGHAN. I will leave that to others to judge if that is correct, sir.

Senator INOUYE. I have many other questions Mr. Chairman, but if I may, I would like to submit them to the administrator.

Senator BREAUX. Without objection, the Senator from California, Senator Wilson.

Senator WILSON. Thank you, Mr. Chairman. Mr. Chairman, by way of response to a question that you raised earlier, I would ask Mr. Gaughan if he does not think frankly that a better answer than the one he gave is offered in the testimony of Warren G. Leback, senior vice president for vessel operations, Puerto Rico Marine Management. In his testimony Mr. Leback states "The reason for the permissions given in 1981 and 1983 were stated over and over again as the necessity for ship replacement by subsidized operators, in view of the restrictions of their existing subsidy contracts and the lack of any CDS funds which would enable them to satisfy those contracts, replace vessels, and modernize their fleets in U.S. shipyards. Not one of those rationales apply to S. 2510, which is for the benefit of a presently unsubsidized operator, and does not relate to ship replacement, modernization, or contract restrictions."

Would you agree?

Mr. GAUGHAN. There is no doubt that those legislative actions, Senator, in 1981 and 1983, were in recognition of the fact that there was a need for subsidized operators to modernize their fleets and to go from steam to diesel power. Sea-Land's, vessels are modern, diesel-powered vessels that operate with far fewer men. These are efficient vessels that strenghten the U.S. fleet.

Senator WILSON. But the point that was made here, and I think quite properly made, is that the permission was given in view of the restrictions in existing subsidy contracts.

It is also true, as you point out, that those permissions in 1981 and 1983 did not confine themselves to a single operator. And the companies, as the Chairman has pointed out, followed Congressional authority rather than first acquiring the vessels and then seeking to persuade Congress that such authority should be given.

I think that is a very significant difference. The Senator from Hawaii has mentioned that this is permissive legislation, that it confers upon your discretion as to whether or not to grant the application for subsidy. But the fact of the matter is that the vessels involved in this legislation, S. 2510, must be less than 10 years old and more than 20 thousand dead weight tons. And there is no point in being coy, and he has not been, I commend the Senator for his candor, that this refers to ships that are owned by Sea-Land and by no other operator.

Let me ask you this question. The Senator from Hawaii said the legislation that is proposed does not prohibit an aggrieved competitor from coming in to appeal MarAd's decision to award an ODS subsidy to Sea-Land. Well, I would point out and I would ask if you do not agree,

that that is really a policy decision that should be made by Congress and not by MarAd.

I mean, here you have a bill that is very narrowly written, it applies only to specific vessels owned by a single operator, and the question I would have for you is, if this legislation were enacted and the application came to you, it does no good to say that you have discretion. I would ask you what would affect your discretion. Would you feel that you had discretion? What would make you decide one way or the other? It seems to me that this bill says if the suit fits, put it on.

Mr. GAUGHAN. Senator, the policy question here is for the Congress to decide whether to enact the legislation. The Merchant Marine Act of 1936 gives very broad discretion to the Maritime Adminstration to weigh a whole range of factors in deciding whether an application for subsidy or an amendment to a contract be granted. It also provides a number of statutory requirements, if you will, for interested parties to come in and be heard. When an opinion is rendered, it has been our practice to give an explanation of that opinion and the basis for reaching that decision. I would not feel that passage of the legislation removing a statutory impediment required me to then approve it.

Senator WILSON. What reasons would cause you to deny it?

Mr. GAUGHAN. If there was already sufficient competition, U.S. flag competition as an example. There are a whole range of possibilities there, sir.

Senator WILSON. Well let me just ask you, if this bill were enacted, and if Sea-Land applied for ODS contracts for the 12 vessels, would you approve the application? Would you approve it for all of the vessels? Would you approve it for some?

Mr. GAUGHAN. Senator, I am sorry that I can not answer that question. Without a whole raft of information, cost and competitive impacts and the comments of others, I am not in a position to even venture what I would do. That would be prejudgement either for or against it, and as a judge I can not do that.

Senator WILSON. Well Mr. Gaughan I quite agree with that, and that is the answer I expected from you.

But is it not true that until Congress does something about the ODS subsidy reform that you are in a hell of a position to make that decision if we simply enact S. 2510 and do not cure the basic problem?

Mr. GAUGHAN. I think I have made that clear sir.

Senator WILSON. Would not that make the playing field a good deal bumpier?

Mr. GAUGHAN. Yes sir.

Senator WILSON. Let me ask you this, and I know that you can not answer the question specifically. But can you tell me how, if at all, your consideration and judgement would be changed if instead of Sea-Land being the applicant, it were a different operator, one which had bare boat chartered the vessels from Sea-Land and then time chartered them back?

Mr. GAUGHAN. Senator, that has sort of a familiar ring to parts of——

Senator WILSON. Well I'm just posing a purely hypothetical question.

Mr. GAUGHAN. I understand, and I make it my practice not to answer hypothetical questions. So, I really can not give you a definitive or clear answer on that sir.

Senator WILSON. Well then let me ask you whether MarAd has ever addressed the question of the extent to which a company can escape the restrictions of the 1936 Act by bare boat chartering vessels to an entity which receives ODS and then time chartering them back? That is not too hypothetical.

Mr. GAUGHAN. Senator, during my tenure as the Maritime Administrator, that question, to the best of my recollection has not been presented to me. I will ask my counsel to see if situations similar to that have been addressed before. But those are clearly the kinds of questions that would be considered by the Maritime subsidy board in an application that might arise from such an arrangement. Those are precisely the type of questions that would have to be looked at and addressed.

Senator WILSON. Mr. Chairman, I think we ought to request for the record copies of any rulings dealing with this issue in either the liner or bulk trades.

Senator BREAUX. We probably have that, but we will make the request of John if you can get that to us.

Senator WILSON. Let me ask you then Mr. Gaughan, have you been able to, if you make the assumption that if this legislation were enacted and it were to prove in your discretion that as a result of legislation ODS subsidy were warranted for the 12 Sea-Land ships, could you tell us what the cost of this legislation would prove to be?

Mr. GAUGHAN. I will have to submit that for the record sir. First of all, I do not have the up-to-date operating costs on those vessels to lay them against their principle competition. I am just not in a position to provide that information at this point. We can try, and it may be with some qualifyers sir, but we will try to be responsive in the record.

[The following information was subsequently received for the record:]

While we do not have detailed, up-to-date cost information for the vessels, we estimate that each vessel would accrue a maximum of $2.1 million in ODS per year for an annual total of $25.2 million for all 12 vessels. This assumes that ODS would be paid for wages only with a maximum of a 21-man crew and that the vessels would be operated in the Pacific services.

Senator WILSON. Thank you, Mr. Gaughan. Mr. Chairman, let me just state, because I feel strongly, that the absence of testimony from A & P does leave a gaping hole in the record. We should note for the record that on July 6th a newly formed company, the Great Atlantic and Pacific Shipping Corporation, agreed in principle to acquire Waterman Marine Corporation and Farrell Lines Incorporated. That has been written up on the business pages of major newspapers, and I do not think it is any secret.

A & P announced that they will use Waterman to bare boat charter all 24 of Sea-Land's vessels, that is to charter the vessels but not pay for any overhead costs associated with those vessels such as a labor cost.

Sea-Land would then, as I understand it, time charter the vessels back from Waterman. Now since Waterman would actually operate the ships, it would be Waterman who would receive the ODS funds received under S. 2510. And this subsidy would allow Waterman to time charter the vessels to Sea-Land at a much lower cost, presumably reducing Sea-Land's unit cost below their present unsubsidized level.

In addition, Sea-Land would remain technically unsubsidized, which means that Sea-Land would not be subject to the same restrictions placed on other ODS recipients with respect to trade routes, foreign feeders and other consideration, as American Present Lines is restricted.

I would hope, Mr. Gaughan that some of those considerations would affect your judgement as to the propriety of the subsidy.

Senator BREAUX. Will the Senator yield?

Senator WILSON. Surely.

Senator BREAUX. On that last point about Sea-Land not being subject with those ships to the same requirements as a subsidized liner, wouldn't 804 and 805 come into play before ODS is approved by Maritime administrators with regard to where those ships would be operating, etcetera?

Mr. GAUGHAN. Well, 804 is foreign flag operations. 805 is domestic operation versus subsidized foreign operation. I do not believe they would be a problem sir, not under the arrangement that the Senator is talking about.

Senator BREAUX. That is a significant point, and I am glad you brought it out, because I did not understand that.

Mr. GAUGHAN. But Senator, if I could just add one comment. Administratively, the Maritime Administration has already done a rulemaking revising the trade routes, which are these very specific areas or very specific service descriptions to trade areas. Subsidized operators are free today to come in and renegotiate their contracts to get trade areas which give them greater trading flexibility. The operators, at the present time, have not chosen to do that.

Senator WILSON. But that is not really the question, Mr. Gaughan. The question is what happens when someone who is not subject to those restrictions is the applicant? I believe that is the question.

Mr. GAUGHAN. That, Senator is again the type of question that, if an application were received, would be raised and would require addressal.

Senator WILSON. I can only say, Mr. Chairman, that I think it is properly raised now because I think it is a matter of policy that neither MarAd nor the Congress has resolved with respect to the 1936 Act, and I think that it needs to be resolved, because it seems to me that it is a gaping hole, a loophole.

Senator WILSON. Thank you.

Senator BREAUX. Senator Inouye has another question.

Senator INOUYE. I just want to clarify a few things. My dear friend from California suggested that this bill, although it does not name Sea-Land was a bill intended to benefit Sea-Land. I made no bones about this, in fact in my statement I mentioned Sea-Land.

I would point out to my dear friend that when Congress was in the process of enacting legislation in 1983 to enable Lykes to take advantage of the build foreign authority, American President Lines and other subsidized operators received in 1981, he added a few amendments solely to benefit American President Lines.

I did not suggest that all operators may come under my bill. In fact in anticipation of this hearing, I submitted a question to CBO, the Congressional Budget Office to review this measure, to make certain how much it would cost if this bill became law. And if I may Mr. Chairman I would like to submit this letter dated July 11th, which we just received this morning be made part of the record.

According to MarAd information, APL with 23 ships received in 1988 $62,430,000 in subsidy; and in 1989 $66,579,000, which comes out to approximately $2,700,000 per ship in ODS subsidy. Lykes, with 29 ships in 1988, received $84,000,000; in 1989 $92,000,000, approximately $3,200,000 per ship subsidy.

Waterman with three ships received subsidies in 1988 of $12.236, and in 1989 $12.748, approximately $4.2 million per ship.

And Farrell with six in 1988, received $19.2 million, and in 1989 $18.4 million, roughly $3 million per ship. According to CBO, based on information they received from MarAd, if S. 2510 were enacted, the federal outlays under the ODS program would increase by about $2 million a year for each vessel covered, assuming that all 12 vessels are covered. And in other words up to a maximum of $24 million a year.

And if the operator is not permitted to retain subsidy payments on military cargo, this amount would be reduced slightly. These estimates are based upon information obtained from MarAd, and have been developed on the assumption that the vessels would be used year round in the Pacific ocean market, and that they would continue to carry about the same mix of preference an nonpreference cargo as they do now.

This is from the CBO.

Senator BREAUX. I thank the Senator.

Let me ask, based on Senator Inouye's statement, the numbers that he presented, would the Maritime Administration have sufficient ODS funds to cover those if those requests were made?

Mr. GAUGHAN. Senator, I am hesitating because I am not sure in what context, I mean, under what arrangement we are talking about. If you are saying that an application for subsidy was received directly from Sea-Land, you are looking at $24 million. You would then have to look at whether people were operating up to the full projected amounts to see if there was that kind of money in what had been appropriated for the year.

Senator BREAUX. Plus you have the possibility of 12 additional ships, wouldn't you?

Mr. GAUGHAN. Yes.

Senator BREAUX. That would be eligible?

Mr. GAUGHAN. Yes.

Senator BREAUX. The other side of the coin, some of the other operators point out that they could be eligible for as much as $60 million a year in ODS subsidies, is that a ballpark figure?

Mr. GAUGHAN. I would say that is a little high myself. If you are using $2 million for the D-9's, and I will, since those numbers came from my staff, the so-called Atlantic class vessels have to be somewhere in that same range, probably a little higher. But you have the reduction of the double subsidy, so if you are talking 24 ships, you are probably in the range of $50 million or so, not $60 million sir. But I am doing this off the top of my head.

Senator BREAUX. I appreciate that. Let me ask a more, the more important question that Senator Wilson raised.

Would a nonsubsidized shipping company that acquires vessels that are ODS subsidized vessels be able to operate those subsidized vessels without the same restrictions that a subsidized company would have to follow and conditions that they would have to meet?

My question is, is this arrangement that we hear about in the public, would it allow Sea-Land to do some things without meeting the same requirements of other subsidized carriers? You had pointed out in testimony that in order to grant ODS, which is discretionary, that you would have to look at certain things to determine whether it meets those criteria, 804, 805 and others, it would be a public hearing.

But that after you make that approval on these vessels, could another company that charters those vessels operate them in a way that does not require them to meet the same standards as a ODS subsidized carrier. And I think you said that they would be able to do that.

Mr. GAUGHAN. Senator, I do not see how the charterer would in fact be able to evade the conditions that were covering the operation of the vessels included in the ODS contract.

Senator BREAUX. Then the answer is no. Then the answer that you are telling me now is that that unsubsidized carrier that operates through a charter, vessels that are receiving ODS subsidy would have to meet the same conditions as an otherwise subsidized carrier?

Mr. GAUGHAN. Insofar as directing the operation of the subsidized vessels, yes, sir.

Senator WILSON. Mr. Chairman.

Senator BREAUX. Let him finish and then you can comment.

Mr. GAUGHAN. My only point would be this. I made the comment earlier about there being this trade area authority which we have done administratively and is available for carriers to take advantage of.

Senator BREAUX. But subsidized carriers can take advantage of it.

Senator WILSON. That is the point, Mr. Chairman, and I think it is well for us to make it. That is why I ask for whatever rulings might exist on the point, because what we are really asking about is whether or

not an unsubsidized operator free of restrictions can enjoy the best of all worlds by dealing through charter with a subsidized operator. Now you are saying, Mr. Gaughan that your feeling is that the subsidy and the restrictions should follow the boat?

Mr. GAUGHAN. That is subject to the review of counsel to tell me that I am not getting this right, sir, but in terms of directing the operation of the subsidized vessels, that is correct.

Senator WILSON. I do not disagree with you as a matter of policy. But I would say that I do not think it is clear in the law. And I think that there is a real opportunity for a tremendous injustice to occur under this legislation without a specific ruling on that point. Or, better yet, a specific statement by Congress in the law.

Mr. GAUGHAN. Well, Senator, to the extent that you have asked for expressions from me of what I would and would not consider, I certainly view the conditions that become part of an operating contract are there to be adhered to. That includes where the subsidized vessels operate, what is going to be paid and so forth. And I do not really look forward to schemes that would in fact somehow evade that and did not anticipate that that would be the case.

Since we are having an airing of the issue, I would like to make it clear that, if an application came in as a part of some kind of a transaction that sought trade area flexibility in a subsidy contract, and that flexibility were available to others, the other parties can not very well argue that it is unfair, if they choose not to take advantage of it. It is an unfair advantage to someone else if they took advantage of something that is in fact not available to all. That is the one point that I wanted to make, sir.

Senator BREAUX. But in your opinion I guess, the final point on this is that the unsubsidized carrier that is chartering subsidized liners to operate would not be able to get anything that would not be available to the subsidized carrier. There would be nothing that they would be absolved of having the foul up that the subsidized carrier would have to.

Mr. GAUGHAN. In my view that is absolutely correct, sir. However, I would like to make one clarification. When I refer to restrictions imposed on the ODS contracrtor being imposed on the time charterer in this arrangement, I am talking about restrictions pertaining to operation of the subsidized vessels. Tjhose restrictions would not necessarily apply to other vessels operated by the time charterer. This goes to the section 804 and 805 issues that -I commented on earlier.

Senator BREAUX. Okay. I have some questions I will submit for the record Mr. Gaughan and ask you to respond to. Any other questions?

Senator INOUYE. Mr. Chairman, just one question.

Senator BREAUX. The Senator from Hawaii.

Senator INOUYE. Mr. Administrator, is it correct that your agency is presently contemplating the return of $72 million to the Treasury on ODS funds in this fiscal year?

Mr. GAUGHAN. No sir. I will ask Mr. Bowman to elaborate on that.

Mr. BOWMAN. Senator, what we have is a budget that was put forward based on the amount of ODS we expected that the carriers would earn on their operations. However, ODS is paid only as those carriers actually earn it and present vouchers for payment. In other words, money is appropriated and provicded to us as liquadating cash only for expenses actually incurred. If at the end of the year, ODS payments fall below projected amounts, the excess is, in effect, withdrawn and is not available to us.

So we are not turning anything back.

Senator INOUYE. So you do not have any left over?

Mr. BOWMAN. We do not have any carry-over of ODS in that sense. That is not the way it is designed.

Senator INOUYE. But if applications would come in, you still have money available?

Mr. BOWMAN. Not for new contracts, only for existing contracts. In this regard, there could be money if the carriers under contract did not expend what we had projected they would. In other words, at the beginning of the year, we expect a certain level of operations by the existing carriers. During the early part of the year, the carriers may operate at less than that level. However, as the year progresses, operations may accelerate beyond our projections and eat up the excess. In any event, available excess funds during the year could only be used for existing contracts.

It now appears that the carriers are in fact operating at a level somewhat less than what was projected at the beginning of the year. But, as I said earlier, there is no carry over or turn back of money.

Senator INOUYE. Thank you.

Senator BREAUX. Okay. Gentlemen, we thank you for being with us. This panel will be excused.

[The following information was subsequently received for the record:]

U.S. SENATE
Washington, DC, July 27, 1988.

Mr. JOHN GAUGHAN,
Maritime Administrator, Department of Transportation, Washington, DC.

DEAR MR. GAUGHAN: One of the concerns expressed at the hearings on S. 2510 was that Sea Land had chosen not to enter into ODS contracts because it preferred to be free of the restrictions which the law places on operators as a condition of receiving operating subsidy. In other words, it opted for flexibility that ODS operators do not have.

As I observed at the hearing, however, in the past five years it seems to me that American President Lines has been given a good deal of flexibility which usually goes with being an unsubsidized operator.

On this point, there appeared to be a conflict in the testimony regarding the evolution of the fleet of American President Line, Ltd. (APL) since enactment of section 615 in 1981. If I understand its testimony correctly, APL's position is that it has been and continues to be replacing its fleet pursuant to its obligations under its ODS contract. Other testimony suggests that APL has in fact been both upgrading and augmenting its fleet capacity (through one-for-one replacement of small vessels with vessels two or three times larger) without reference to ODS contract vessel replacement obligations.

I believe the hearing record should be clear on this important matter, and I would therefore appreciate your response for the record to the following questions:

1. Is my understanding correct that the APL's 23-vessel subsidized fleet will by the end of 1988 be comprised of:

Three U.S.-built vessels which had been constructed under the CDS program and were thereafter reconstructed in Japanese shipyards pursuant to a direct section 615 authorization from MarAd to APL.

Five vessels currently being delivered by German shipyards which were constructed under section 615 authorities purchased by APL from C.C. Wei.

Four vessels chartered from Lykes which were constructed in Japanese shipyards and subsequently nominated as section 615 vessels using section 615 authorities obtained from Delta Steamship Lines and APL.

Two foreign-built vessels acquired under section 134 of Public Law 98–151.

Nine vessels which were built in U.S. shipyards under the CDS program and not rebuilt in foreign shipyards.

2. If so, please provide me with the following information regarding the eleven foreign-built vessels (as "Replacement Vessels") and the vessels which they replaced (the "Replaced Vessels.")

A. As to each of the Replacement Vessels: Vessel size stated in TEU's; date the vessel became or is expected to become a subsidized vessel under APL's ODS contract; name of the vessel/vessels replaced or to be replaced.

B. As to each of the Replaced Vessels: Vessel size stated in TEU's; date on which APL ceased or is expected to cease operating the vessel; age of the vessel on the date when APL ceased or is expected to cease operating it.

3. Focusing on the twelve U.S.-built (including three foreign rebuilt) vessels remaining in APL's fleet, please provide the following information: the date on which each vessel will reach its 25th anniversary; what, if any, replacement obligations APL has under its ODS contract with respect to each vessel, including the terms and conditions attached to any such replacement obligation.

Thank you for your attention to this matter.

Aloha,

DANIEL K. INOUYE,
United States Senator.

U.S. DEPARTMENT OF TRANSPORTATION,
MARITIME ADMINISTRATION,
Washington, DC, August 15, 1988.

Hon. DANIEL K. INOUYE,
U.S. Senate, Washington, DC.

DEAR SENATOR INOUYE: This is in response to your July 27, 1988, letter regarding the evolution of the fleet of American President Lines, Ltd. (APL). All of APL's acquisitions have been in compliance with contractual vessel replacement obligations. Some of the acquisitions have been charters, and these have been considered temporary replacements for vessels removed from APL's operating-differential subsidy (ODS) contract, for which there is a replacement obligation.

Upgrading a subsidized operator's fleet by replacing smaller, older vessels with larger, newer vessels in considered by the Maritime Subsidy Board to be wholly consistent with the overall purpose of the Merchant Marine Act, 1936, as amended (Act), i.e., to foster the development and maintenance of an adequate and well-balanced U.S. merchant marine. Since the Act provides that ODS contracts may be granted for 20 years, after award of such ODS contracts it is contemplated that the vessels will be replaced and/or upgraded at some point if market conditions warrant. The Board has consistently held section 605(c)[1] of the Act to be inapplicable whenever an operator replaces vessels, consistent with the notion of ordinary replacement, or upgrading its vessels.

In response specifically to your three questions:

1. Your understanding of APL's 23-vessel subsidized fleet by the end of 1988 is correct. Is should be noted, however, that APL was granted Maritime Administration approval to midbody in a foreign shipyard three C9 vessels built with construction-differential subsidy (CDS) in 1982. Each ship's reconstruction would require about 35 days' shipyard time, so it is possible that one or more vessels could be midbodied by the end of 1988. The company has not yet, to our knowledge, entered into a reconstruction contract. These vessels would continue to be eligible for ODS, but would lose domestic trade Jones Act rights and would not be eligible to carry civilian preference cargoes for three years after rebuilding pursuant to section 901(b) of the Act.

---

[1] Section 605(c) of the Act provides, in relevant part:

"No contract shall be made under this title with respect to a vessel to be operated in an essential service served by citizens of the United States which would be in addition to the existing service, or services, unless the Secretary of Transportation shall determine after proper hearing of all parties that the service already provided by vessels of United States registry is inadequate, and that in the accomplishment of the purposes and policy of this Act additional vessels should be operated thereon; . . ." (46 USC 1175(c)).

2.

A			B			
New Vessel	Capacity TEU	Date Subsidized	Replaced Vessel	Capacity TEU	Date Off Subsidy	Age when subsidy ceased (years)
(5) C9-M-F150a	3,800	5/5/88	C5-S-75a	breakbulk gen'l cargo ship	11/30/87	19
C9-M-F150a	3,800	7/88	C5-S-75a	"	12/30/87	19
C9-M-F150a	3,800	7/88	C5-S-75a	"	2/29/88	18
C9-M-F150a	3,800	9/88	C6-S-1xa	1,050	9/88	24
C9-M-F150a	3,800	9/88	C6-S-69c*	1,094	9/88	20
* estimate of ship type to be replaced						
(2) C9-M-F148a	2,522	12/9/84	P. ROOSEVELT C6-S-1x	1,012	4/25/83	21
C9-M-F148a	2,522	9/7/84	P. EISENHOWER C6-S-1x	1,012	4/12/83	21
(4) C9-M-F151a	3,010	4/29/87	C6-S-69c	1,094	5/9/87	19
C9-M-F151a	3,010	4/21/87	C6-S-69c	1,094	4/18/87	20
C9-M-F151a	3,010	4/8/87	C6-S-69c	1,094	4/3/87	19
C9-M-F151a	3,010	4/1/87	C5-S-75a	breakbulk gen'l cargo ship	5/5/87	18

(11) vessels

3.

Vessel Type	Date of 25th anniversary	Vessel Name
C8-S-F81e	7/16/96	P. HOOVER
C8-S-F81e	9/20/96	P. GRANT
C8-S-F81e	3/3/97	P. TYLER
C8-S-81e	11/30/96	P. HARRISON
C6-S-85b	2/16/98	P. JEFFERSON
C6-S-85b	4/12/98	P. MADISON
C6-S-85b	11/30/98	P. PIERCE
C6-S-85b	1/4/99	P. JOHNSON
C9-M-132b	10/21/07	P. LINCOLN
C9-M-132b	3/29/07	P. MONROE
C9-M-132b	12/29/07	P. WASHINGTON
C5-S-75a	10/22/94	P. CLEVELAND

APL's contract currently calls for replacing vessels which have been temporarily replaced by chartered vessels. A revised replacement obligation will be prepared after delivery of the last of the West German newbuildings currently being delivered. The replacement obligation currently is:

No. of Ships	Vessel Type	Expiration of Economic Lives
4	C6-S-69c	1992-1993
2	C5-S-75a	1994
3	C8-S-F81e	1996-1997
4	C6-S-85b	1998-1999

The Operator agrees to place into the Capital Construction Fund sufficient amounts to meet the equity requirements existing at the time of execution of the construction contracts. APL's ODS contract requires a certain timetable regarding contracting for replacement ships, predicated upon availability of CDS. Absent such funds, the replacement schedule may be deferred.

I trust we have been responsive to your inquiry. Should you require any further information, I will be pleased to furnish it.

Sincerely,

(Sgd.) William A Creelman

for JOHN GAUGHAN
Maritime Administrator

U.S. DEPARTMENT OF TRANSPORTATION,
MARITIME ADMINISTRATION,
Washington, DC, July 25, 1988.

Hon. PETE WILSON,
Committee on Commerce, Science, and Transportation, U.S. Senate, Washington, DC.

DEAR SENATOR WILSON: During hearings on S. 2510, held on July 12, 1988, you asked for information on previous Maritime Administration ("MARAD") actions in situations where subsidized vessels were time chartered to another entity. I am pleased to provide the following information for inclusion in the hearing record.

MARAD has determined from time to time that, in general, a time charterer of a vessel under an operating-differential subsidy contract is not subject to sections 804 and 805(a) (restrictions on affiliations with domestic or foreign-flag vessel operations by a contractor receiving operating-differential subsidy). Sections 804 and 805(a), by their own terms, apply only to a contractor receiving subsidy or any holding company, subsidiary, affiliate, etc. The affiliation which is necessary to extend the application of sections 804 and 805(a) to time charterers has been construed to be an ownership interest in the subsidized contractor. In addition, under sections 608 and 805(d), if the subsidized vessel is operated or managed by any other person or concern, then that person or concern would be subject to all the provisions of the Act, including, of course, sections 804 and 805(a).

Thus, key concerns are whether the charterer will "operate" the subsidized vessel or have an ownership interest in the subsidized contractor. Time charters are examined carefully for any aspect which might trigger an 804 or 805(a) relationship. If there is no relationship, by law there is no basis to impose sections 804 and 805(a) on the time charterer. MARAD has imposed restrictions on past arrangements to assure that there is no subsidy linkage from the contractor to the time charterer. This principle would apply regardless of whether the time charterer was subsidized, unsubsidized or whatever. The controlling factor is the relationship between the contractor and the charterer and not the character of the charterer.

Prior examples of time charters of subsidized vessels are as follows:

1. In 1968, MARAD authorized American President Lines, Ltd. to time charter three subsidized passenger/cargo vessels to its wholly owned subsidiary, American President Lines Passenger Service, Inc. In view of the close financial relationship between the subsidized contractor and the time charterer, MARAD's approval was subject to the time charterer being subject to all the provisions of the Act, including sections 804 and 805(a).

2. Many of the bulk vessels built in the 1970's and operated under subsidy were permitted to be time chartered to unrelated entities without extension of sections 804 and 805(a) to the time charterer. Some of these vessels, such as those operated by Aries Marine Shipping Company, were permitted to be chartered to non-citizens. In all such instances, the subsidized contractor was the operator of the vessel and there was no common ownership or control as between the subsidized contractor and the time charterer.

3. In 1981, MARAD approved an arrangement involving Ogden Marine, Inc. (OMI), which was affiliated with companies that operated foreign-flag vessels and vessels in domestic trade. OMI bareboat chartered four bulk vessels to an unrelated subsidized contractor, Ocean Carriers, Inc. (Ocean Carriers). Ocean Carriers, in turn, time chartered the vessels back to OMI. Ocean Carriers assumed the existing collective bargaining agreements for operating the four vessels for several years. There was no common ownership nor were there common directors between OMI and Ocean Carriers. Upon consideration of the facts of this arrangement, MARAD concluded that no aspect of the corporate and contractual structure fell within the relationships enumerated in sections 804 and 805(a). A copy of the Maritime Subsidy Board minutes explaining this conclusion is enclosed.

For the information of the Committee, MARAD has informed Sea-Land of its preliminary view that if the transactions envisioned between the Great Atlantic & Pacific Shipping Corp. and Sea-Land were legally analogous to past precedents in which sections 804 and 805(a) were not imposed on the time charterer, then the same treatment would be accorded Sea-Land. That preliminary view was expressly subject to MARAD's review of the details of the transactions. A copy of MARAD's letter to Sea-Land is enclosed.

Sincerely,

JOHN GAUGHAN,
Maritime Administrator.

Senator BREAUX. We will invite up our first panel, Mr. Robert Hintz, Mr. George Hearn, Mr. Jim Amos and Mr. Richard Parks, representing of course Sea-Land Corporation, Waterman Steamship, Lykes Brothers and Farrell Lines. We are glad you are with us, and look forward to your testimony. Gentlemen, we welcome you. Mr. Hintz, we have you listed first. Bob, we are glad to have you here. Pull that mike over there so that we can hear you and we will receive your testimony. Introduce your associate there.

STATEMENT OF ROBERT L. HINTZ, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, SEA-LAND CORPORATION

Mr. HINTZ. Mr. Chairman, I would like to summarize my remarks and then have them included in the record.

I am Bob Hintz, Chairman and CEO of Sea-Land Corporation. Accompanying me are Peter J. Finnerty, vice president of public affairs, Sea-Land Corporation and William F. Ragan, our Washington D.C. counsel. We appear on behalf of Sea-Land Corporation and our principle operating subsidiary, Sea-Land Service, Incorporated.

As you would expect, we testify in strong support of S. 2510 as amended as a first step in eliminating an inequitable situation directly disadvantaging Sea-Land. Before amplifying on Sea-Land's specific ODS anomaly, I want to first cite a development in the U.S. flag liner industry since S. 2510 was introduced.

Last week, the Great Atlantic and Pacific Shipping Corporation, A & P Shipping announced it had agreed in principle to a series of transactions which if approved by the Maritime Administration and the Justice Department and consummated will significantly strengthen the competitive posture of a major segment of the U.S. flag liner industry.

The proposed acquisition by A & P shipping, enactment of S. 2510 and charter arrangements that would be entered into between A & P Shipping and Sea-Land Services Inc., hold great potential to finally begin to correct the deficiencies in U.S. Maritime policy.

S. 2510 is a very limited and precise legislative proposal. It would provide ODS eligibility to 12 modern U.S. flag container ships Sea-Land Service Inc. operates in the trans-Pacific trade. I stress the word eligibility because nothing in the bill requires or guarantees the ships receive ODS. The administrative processes of the Maritime Administration and the Maritime subsidy board control whether the 12 ships actually receive ODS. Nevertheless, eligibility for ODS is an essential prerequisite toward enabling 12 D-9J class ships opportunity for equality of treatment with other modern technology, foreign built U.S. flag container ships already receiving ODS.

Sea-Land is at an obvious crew cost disadvantage in meeting foreign competition because our ships are denied ODS. Although Maritime labor has cooperated in crew reductions and reduced compensation, the difference with competing foreign crew costs is still substantial.

Because of the cooperation of our sea going unions, the D-9J ships are each operated with a complement of only 21 officers and crew. Under terms of existing ODS contracts, if S. 2510 becomes law, we expect that subsidy payments for D-9J ships would be lower than any other container ship in the currently subsidized liner fleet.

There are presently five Sea-Land container ships in the Hawaii trade. Sea-Land intends that all its ships operate in that trade entirely without ODS. Neither does Sea-Land intend to seek subsidy on its four U.S. built vessels operating in foreign commerce between the continental U.S. and the Caribbean, via Puerto Rico.

For purposes of clarification, the bill does not subsidize the D-9J's. It would be up to the Maritime Administration to determine whether and under what terms and conditions subsidy would actually apply to D-9J operations under an ODS contract. It does not purport to be, or to be in lieu of ODS reform legislation.

Whether or not S. 2510 becomes law, Sea-Land intends to continue to cooperate with Congress, the Administration and other elements of the liner industry towards Maritime promotional program reform.

It also does not in any way negate vessel construction in U.S. shipyards. The D-9J's are existing vessels which have operated under U.S. flag in the foreign commerce for years. It is a simple fact that no vessel construction will be affected one way or the other by dint of enactment of S. 2510.

While on the subject of S. 2510's limitations, two additional factors should be noted. First, Sea-Land is aware of Senator Inouye's announced intention to offer an amendment which will preclude any vessel subsidized as a result of enactment of S. 2510 as well as any other subsidized vessels of a contractor who implements ODS vessels eligibility under S. 2510 from retaining ODS on premium rated civilian preference cargo and on military cargo.

Sea-Land has no objection whatsoever to the Senator's amendment.

Second, Sea-Land recognizes that it is the long standing policy of the Maritime Administration to limit ODS to wage related differentials on container ship operations. Sea-Land fully expects that the policy would apply to any subsidation of the D-9J's.

As I noted at the outset, A & P Shipping's recent announcement deserves further comment. Sea-Land has reached an agreement in principle with the Great Atlantic and Pacific Shipping Corporation regarding charters of the D-9J class ships and 12 Atlantic class container ships.

A & P has agreements in principle to acquire all of the capital stock of Farrell Lines, Incorporated, and of Waterman Marine Corporation, which is the parent of Waterman Steamship Company. And they also have certain other agreements with Lykes Shipping Company.

Both Farrell and Waterman Steamship hold ODS contracts. Naturally, A & P Shipping's proposed acquisitions are subject to necessary government approvals. Assuming A & P Shipping will close on its transactions, Sea-Land will then bare boat charter its 12 D-9J ships and its 12 Atlantic class ships to Waterman. Waterman would operate the 24

ships and time charter them to Sea-Land for continued use in trans-Pacific and trans-Atlantic services.

The time charter would take account of Waterman's reduced vessel operating costs as an ODS carrier and achieve a lower charter hire rate.

Enactment of S. 2510 is vitally important to Sea-Land's remaining competitive in foreign commerce. As I noted earlier, whether ODS is actually paid on the vessels will depend entirely on the administrative processes of the Maritime Administration.

We believe however, extending ODS support to the 12 D-9J's would be consistent with the purposes and the policies of the Merchant Marine Act of 1936 and should be approved.

That completes my summary, and we would be glad to answer any questions.

[The statement follows:]

89-377 0 - 88 - 3

STATEMENT OF ROBERT L. HINTZ, CHAIRMAN AND CHIEF EXECUTIVE OFFICER, SEA-LAND CORP.

I am Bob Hintz, Chairman and CEO, Sea-Land Corporation. Accompanying me are Peter J. Pinnerty, Vice President, Public Affairs, Sea-Land Corporation and William F. Ragan, Esq. our Washington, D.C. counsel. We appear on behalf of Sea-Land Corporation and our principal operating subsidiary, Sea-Land Service, Inc.

As you would expect, we testify in strong support of S. 2510, as amended, as a first step in eliminating an inequitable situation directly disadvantaging Sea-Land. Before amplifying on Sea-Land's specific ODS anomaly, I want to first cite a development in the U.S.-flag liner industry since S. 2510 was introduced.

Last week, the Great Atlantic and Pacific Shipping Corporation (A&P Shipping) announced it had agreed in principle to a series of transactions which—if approved by the Maritime Administration and the Justice Department—and consummated—will significantly strengthen the competitive posture of a major segment of the U.S.-flag liner industry. The proposed acquisition by A&P Shipping, enactment of S. 2510 and charter arrangements that would be entered into between A&P Shipping and Sea-Land Service, Inc. hold great potential to finally begin to correct the deficiencies in U.S. maritime policy. I will elaborate on the matter at the end of this statement.

S. 2510 is a very limited and precise legislative proposal. It would provide ODS eligibility to twelve modern, U.S.-flag containerships Sea-Land Service, Inc. operates in the trans-Pacific trade.

I stress the word "eligibility" because nothing in the bill requires or guarantees the ships receive ODS. The administrative processes of the Maritime Administration and the Maritime Subsidy Board control whether the twelve ships actually receive ODS. Nevertheless, eligibility for ODS is an essential prerequisite toward enabling twelve D–9J class ships opportunity for equality of treatment with other modern technology, foreign-built, U.S.-flag containerships already receiving ODS.

Sea-Land is at an obvious crew cost disadvantage in meeting foreign competition because our ships are denied ODS. Although maritime labor has cooperated in crew reductions and reduced compensation, the difference with competing foreign crew costs is still substantial.

Because of the cooperation of our sea-going unions, the D–9J ships are each operated with a complement of only 21 officers and crew. Under terms of existing ODS contracts, if S. 2510 becomes law, we expect that subsidy payments per D–9J ship would be lower than on any other containerships in the currently subsidized liner fleet.

The containerships which Sea-Land operates in its Mid-Pacific Express Service between the West Coast and Taiwan via Hawaii and Guam were built in the United States. Those ships are already eligible for ODS and would not be affected by S. 2510.

However, Sea-Land does not believe that ships operated in a service which is so heavily involved in the domestic offshore trades should receive ODS, even though the Merchant Marine Act, 1936, allows MarAd to authorize such operation with a partial reduction of ODS payments. Sea-Land does not intend that its ships engaged in the trade between the West Coast and Taiwan via Hawaii/Guam receive any ODS while so-operated.

There are presently five Sea-Land containerships in the Hawaii trade. Sea-Land intends that all its ships operate in that trade entirely without ODS.

Neither does Sea-Land intend to seek subsidy on its four U.S.-built vessels operating in foreign commerce between the continental U.S. and the Caribbean via Puerto Rico.

For purposes of clarification, the bill:

Does not subsidize the D–9J's. It would be up to the Maritime Administration to determine whether—and under what terms and conditions—subsidy would actually apply to D–9J operations under an ODS contract.

Does not purport to be—or to be in lieu of—ODS reform legislation. Whether or not S. 2510 becomes law, Sea-Land intends to continue to cooperate with Congress, the Administration, and other elements of the liner industry towards maritime promotional program reform.

Does not in any way negate vessel construction in U.S. shipyards. The D–9J's are existing vessels which have operated under the U.S. flag in the foreign commerce for years. It is a simple fact that no vessel consturction will be affected one way or the other by dint of enactment of S. 2510.

Does not lend itself to general application. That is, under the bill's terms, only Sea-Land "has taken delivery from a United States shipyard of new United States-built liner vessels" in the last two years. Those are Sea-Land's three D–7 container-

ships operating in the Alaska trade. These three ships cost more than $180 million to build in Wisconsin.

Does not establish a legislative precedent, but rather follows precedent. S. 2510 is patterned upon the terms of section 134 of the Public Law 98–151, which granted ODS eligibility to four foreign-built vessels acquired by Lykes Bros. Steamship Co., Inc. (Lykes) and two such vessels acquired by American President Lines Ltd. (APL). S. 2510 is also analogous to—but much more narrow than—section 615 of the Act, under which 29 ODS-qualified liner vessels were built or rebuilt in foreign shipyards.

Does not set the stage for a radical departure from the overall ODS liner fleet U.S.-built/foreign-built consist. Attached is an analysis which categorizes the fleets of the four ODS and three unsubsidized U.S.-flag liner operators by U.S. and foreign buildings, and—if foreign-built—whether ODS qualified.

While on the subject of S. 2510's limitations, two additional factors should be noted. First, Sea-Land is aware of Senator Inouye's announced intention to offer an amendment which will preclude any vessel subsidized as a result of enactment of S. 2510—as well as any other subsidized vessels of a contractor who implements ODS vessel eligibility under S. 2510—from retaining ODS on premium-rated civilian preference cargo and on military cargo. Sea-Land has no objection whatever to Senator Inouye's amendment. Second, Sea-Land recognized that it is the longstanding policy of the Maritime Administration to limit ODS to wage-related differentials on containership operations. Sea-Land fully expects that that policy would apply to any subsidization of the D–9Js.

Turning to the D–9Js themselves, it is appropriate to provide information concerning them for the record. Ten of the D–9Js were built in Japan, while the remaining two were built in South Korea in 1980. Those vessels were built specifically for foreign commerce operations by Sea-Land, and were immediately registered as U.S.-flag vessels for that purpose. The D–9Js as currently configured have capacities of approximately 1,250 40-foot equivalent container units (FEUs). The D–9Js have 21-man crews and are modern automated, diesel-powered cellular containerships.

The twelve D–9Js operate in two of Sea-Land's three weekly U.S.-flag containership strings operating between the West Coast and Far East countries. Six of the D–9Js operate on 42-day voyages serving between California and Far East countries, while the other six operate in the same fashion between the Pacific Northwest and Far East countries.

APL aside, Sea-Land's competition in the trans-Pacific trade (*i.e.*, the trade between the United States and Far East countries) is comprised of foreign-flag operators. In round numbers, there are approximately 30 foreign-flag liner operators operating over 150 liner vessels, making approximately 1,500 annual sailings in that trade. Sea-Land and APL collectively provide a little over 300 sailings a year with 32 U.S.-flag linehaul vessels.

With one marked exception, the trans-Pacific container systems of Sea-Land and APL are strikingly similar. That is, both Sea-Land and APL:

Provide three weekly trans-Pacific services.

Employ a mix of U.S.-built and foreign-built, U.S.-flag linehaul containerships.

Provide Asia interport service (carrying both relayed U.S. foreign commerce and foreign-to-foreign commerce), using a combination of dedicated (U.S.-flag and foreign-flag) feeder vessels, space charters on foreign-flag services, and connecting carrier arrangements with foreign-flag operators. APL was just granted permission by MarAd to greatly expand its foreign-flag feeder vessel network.

Provide extensive intermodal (rail, motor and water) transportation throughout the United States using either affiliated companies or independent providers of land and water transportation within the United States.

The marked exception is that APL recieves over $60 million annually in ODS as an offset against the lower wages paid to foreign crews as compared to U.S. crews. Sea-Land receives none.

As I noted at the outset, A&P Shipping's recent announcement deserves further comment. Sea-Land has reached an agreement in principle with the Great Atlantic and Pacific Shipping Corporation regarding charters of the D–9J class ships and twelve Atlantic class containerships.

A&P Shipping has agreements in principle to acquire all of the capital stock of Farrell Lines Inc. and of Waterman Marine Corporation, which is the parent of Waterman Steamship Company. Both Farrell and Waterman Steamship hold ODS contracts. Naturally, A&P Shipping's proposed acquisitions are subject to necessary government approvals.

Assuming A&P Shipping will close on its transactions, Sea-Land will then bareboat charter its twelve D–9J class ships and its twelve Atlantic class ships to Water-

man. Waterman would operate the 24 ships and time charter them to Sea-Land for continued use in trans-Pacific and trans-Atlantic services. The time charter would take account of Waterman's reduced vessel operating cost as an ODS carrier and achieve a lower charter hire rate.

Enactment of S. 2510 is vitally important to Sea-Land's remaining competitive in foreign commerce. As I noted earlier, whether ODS is actually paid on the vessels will depend entirely on the administrative processes of the Maritime Administration. We believe, however, extending ODS support to the twelve D-9Js would be consistent with the purposes and policy of the Merchant Marine Act of 1936 and should be approved.

We would be pleased to try to answer any questions concerning my prepared testimony.

Thank you again for having given Sea-Land this opportunity.

U.S.-Flag Foreign Commerce Liner Fleets of Seven U.S.-Flag Operators

Below set out are the sizes of the U.S.-flag foreign commerce liner fleets of the four subsidized (i.e., APL, Farrell, Lykes, Waterman) and three unsubsidized (i.e., Crowley, Sea-Land, Topgallant) commercial liner operators, showing the number of vessels which are U.S.-built or foreign-built/rebuilt; and—if foreign-built/rebuilt—whether or not ODS qualified. Attached are displays providing details of those carriers' foreign commerce liner fleets.

Carrier [1]	Foreign-built/rebuilt				
	Total fleet	U.S.-built	ODS qualified	Not qualified for ODS	Total under ODS
1. APL	23	9	14	0	23
2. Farrell	6	6	0	0	6
3. Lykes	28	22	4	2	26
4. Waterman	4	4	0	0	4
5. Crowley	7	0	3	4	0
6. Sea-Land	41	11	12	18	0
7. Topgallant	2	0	2	0	0
Total	111	52	35	24	59

[1] Vessels chartered from one U.S.-flag carrier to another U.S.-flag carrier are included in the second carrier's fleet only. Vessel replacements and other events which will affect a given carrier's fleet consist which have been announced by the carrier as planned to occur during 1988 are reflected herein. Vessels which are chartered to the Military Sealift Command or are laid up are likewise included herein. Crowley's sea-going barges in domestic and/or foreign commerce service and Sea-Land's three U.S.-built liner vessels in its purely domestic Alaska service are not included herein.

Note.—ODS qualified and not qualified ODS add to 59.

Summarizing the above display, more than half (59) of the U.S.-flag foreign commerce liner fleet (111) of these seven operators is foreign-built/rebuilt. About 60 percent (35 of 59) of the foreign-built/rebuilt U.S.-flag vessels are ODS qualified through either section 615 or special legislation.[2] Of the remaining 24 foreign-built, U.S.-flag vessels, twelve of Sea-Land's vessels (the D-9J's) are among the newest, most productive and efficient vessels in the U.S.-flag liner fleet. All twelve of those ships operate in the Pacific trade with Asia.

It is in the above context that Congress should qualify for ODS purposes otherwise qualified [3] existing U.S.-flag, foreign-built liner vessels for ODS. The ships have been registered in the United States for more than three years and fully qualify to compete for government-impelled cargoes.

[2] *I.e.*, Section 134 of Public Law 98-151, under which Lykes (4 vessels from Hapag-Lloyd) and APL (2 vessels from NOL) were authorized ODS qualification for foreign-built, foreign-flag vessels acquired and reflagged U.S.

[3] *I.e.*, meeting the age requirements provided for in section 605(b) and the vessel structural criteria provided for in section 610 of the Merchant Marine Act, 1936 (46 App. U.S.C. section 1175(b); section 1180).

Senator BREAUX. Thank you very much Mr. Hintz. Mr. Hearn.

STATEMENT OF GEORGE HEARN, SENIOR VICE PRESIDENT, WATERMAN STEAMSHIP CORPORATION

Mr. HEARN. Good morning Mr. Chairman, Senator Inouye. My name is George Hearn, I am executive vice president, Waterman Steamship Corporation. Waterman currently operates three United States flag lighter aboard ship/barge carrying vessels and one C-5 type vessel between the United States, the Red Sea, South Asia, Indonesia, Malaysia and the Egyptian ports under ODS contract.

Waterman formerly furnished United States flag service between the United States and the Far East, as well as to Northern Europe. But these services were suspended due to economic conditions and other unfavorable circumstances.

We also operate three roll on-roll off vessels which are under charter to the United States Navy. Waterman committed itself in the 1960's to furnishing U.S. flag service with the support of ODS, under contract requiring construction of replacement vessels in the United States. After we built our first three vessels, we were required by the Maritime Administration to build two more vessels despite our doubts as to their economic feasibility under existing conditions in the Far East.

These vessels did in fact lose money. Consequently Waterman was forced into reorganization under the bankruptcy laws. Waterman is also forced to suspend service to Europe as a result of our government's action in withdrawing from the bilateral agreement with Russia. Waterman believes strongly in supporting a United States commercial ship building base. It is not our position that operating differential subsidies should be denied to other United States flag common carrier operators. So long as the grant of such subsidy does not result in unfair competition with Waterman.

However, it would be unfair, if an operator, such as Waterman, who fulfilled its contractual obligations by acquiring U.S. built vessels and who has furnished service under its contract with the handicap of those vessel having a higher fuel operating cost, would be subject to competition from other operators who have been granted special status and receiving ODS for operating foreign built vessels.

It has always been and remains Waterman's position not to oppose subsidy for U.S. flag liner operators on a fair and equal basis. Problems Waterman has found with some of the other legislative proposals has been that the purported level playing field which has been referred to frequently would not have been achieved under those proposals.

In the case of S. 2510, Waterman retains its position and has no objection to the eligibility of these vessels for operating differential subsidy so long as the vessels operate in the trans-Pacific trade, which was indicated and thus have no damaging impact on Waterman. We would be concerned if the legislation was to be used as the vehicle for the passage of other proposals which would have a detrimental impact on our company.

We would be opposed to any amendments to S. 2510 which will allow participation by other foreign built vessels. Waterman believe in fairness that neither these nor other foreign built vessels operated under ODS should be allowed to compete with Waterman's existing service.

Waterman recognizes the competition with foreign flag operators requires ODS and we support enactment of the United States flag fleets competitiveness against foreign flag operators. We do feel however, Mr. Chairman, that we have made a real contribution to the Merchant Marine and that we should have, and that we should not have to run the risk of being fatally injured or possibly put out of business as a result of the benefits that are authorized to other operators. Thank you.

Senator BREAUX. Thank you very much, Mr. Hearn. I note that we have got a New Orleans company on the first panel and another New Orleans company on the second panel.

Mr. HEARN. I would like to interject that we are a Gulf company, too, Mr. Chairman.

STATEMENT OF W. J. AMOSS, JR., CHAIRMAN AND CHIEF EXECUTIVE OFFICER, LYKES BROS. STEAMSHIP COMPANY, INC.

Mr. AMOSS. Thank you, Mr. Chairman. I am W. James Amoss, Junior, Chairman and Chief Executive Office of Lykes Brothers Steamship Company.

S. 2510, which would make 12 foreign-built 2,500 TEU gearless container vessels eligible for subsidized operation has no objection from Lykes. This is legislation which would qualify existing foreign-built American flag vessels as eligible for subsidized operation and we support that.

But we also have to request that two foreign-built, American flagged, roll-on/roll-off vessels, owned and operated by Lykes, be included as an amendment to Senate Bill 2510. We understand that the beneficiary of Senate Bill 2510, Sea-Land, wishes to avoid amendments which might expand 2510 into a broad bill that would encompass general maritime legislative goals.

That is understandable. Maritime legislation rarely gets beyond the hearing stage and significant maritime policy legislation has consistently foundered on the shoals of industry or administration differences since the 1970 amendments to the Merchant Marine Act.

No company needs or desires an end to the debilitating opposition that flares about the liner industry more than Lykes. Nothing is more important than an end to the absurd impasse that has been created by the cancellation of the CDS program and, in that circumstance, the failure to pass relief legislation that would allow foreign building.

Nearly one year ago, Sea-Land, APL and Lykes introduced H.R. 3808, legislation to rectify the situation. It languishes now with no apparent hope of passage by this Congress.

The lack of agreement in the past is the reason for this bill. How many years is that? I remember that in 1980 we came with comprehensive maritime legislation. It failed. In subsequent years many efforts have been made to pass comprehensive maritime legislation and they have all failed. The opposition to that comes from many sides of this industry who see themselves as being damaged.

Meanwhile the liner operators are damaged by an inability to replace fleets, and by an aging fleet. I have heard it said this morning that comprehensive legislation and reform is much more desirable than piecemeal legislation, and I would support that.

But the only legislation that has gotten through into law has been piecemeal legislation. If a person has asthma and pneumonia, you try to cure one even if you can not cure the other. And today we have to find a way to cure one of the several diseases that effects the liner industry.

And I therefore see this bill as an opportunity to make a step in that direction where no other steps seem possible. S. 2510 ought to be passed now and it ought to include the two Lykes roll-on/roll-off vessels which are precisely the type of vessels the Navy desires for initial mobilization use.

These are vessels that have been converted by Lykes to American flag standards in 1981, in an American shipyard, at a cost to Lykes of more than $13 million. These vessels, with their high U.S. crew costs, have subsequently been unemployed because they cannot compete with low cost foreign flag vessels.

Subsidy will make them operable in Lykes trade routes to developing countries. But they will be replacement vessels for the aging vessels that are presently authorized in Lykes' contract, so there will be no subsidy cost impact by approving these vessels.

These are vessels that Lykes could have sold to a friendly foreign owner for operation under Taiwanese flag, but MarAd and the Navy prevented this sale because they deemed the vessels to be vital sealift assets. For all of these reasons, these are vessels which belong in S. 2510, and we ask this Committee to incorporate them as an amendment to the bill.

Thank you, Mr. Chairman.

[The following information was subsequently received for the record:]

LYKES BROS. STEAMSHIP CO., INC.,
New Orleans, LA, July 21, 1988.

BARRY I. KALINSKY,
Merchant Marine Counsel, Committee on Commerce, Science, and Transportation, 425 Senate Hart Office Building, Washington, DC.

DEAR MR. KALINSKY: Following the hearings on S. 2510 I received, through the hand of Bill Verdon, six questions which you had handed over to him with the request that I provide answers. I am enclosing herewith the responses to those six questions.

I very much appreciate the opportunity to testify on S. 2510 and I hope my answers will help provide the Committee with an understanding of the need for this legislation and the compelling reasons for the inclusion of Lykes' two foreign built American flag Ro/Ro vessels as an amendment to S. 2510.

Yours sincerely,

W.J. AMOSS, Jr.

Enclosure.

Question No. 1. Will Lykes support a proposed amendment which will preclude any vessel subsidized as a result of S. 2510 from receiving ODS on premium-rated civilian preference cargo and military cargo?

Answer. The proposed amendment which we have heard about but have not as yet seen is said to require that the twelve Sea-Land D-9 vessels would pay back subsidy based on that proportion of their total cargo which consists of premium rated civilian preference cargo and military cargo. In agreeing to this provision Sea-Land must have considered the following.

The D-9 vessels with their cargo capacity of 2500 TEUs or 50,000 revenue tons will be used in two separate services from California ports and U.S. Pacific Northwest ports to Asia (Hong Kong, Taiwan, Korea, Japan). There is virtually no premium rated civilian preference cargo moving to these developed country ports so the gesture is meaningless for that cargo. Military cargo moves regularly from California ports in quantities that would equal about 15% of the capacity of the 2500 TEU vessels, i.e., 300 to 400 TEUs per vessel. Little military cargo moves from Pacific Northwest ports, therefore, the total impact of reduction of subsidy payments by such provisions on the Sea-Land D-9s will be less than 10%. Obviously Sea-Land would willingly agreed to such a provision.

In contrast, the Lykes Ro/Ro vessels, which are smaller than the D-9s with their capacity of 16,000 revenue tons, will be used on trade routes to underdeveloped countries where the majority of the cargo is Government impelled thus they could be required to forego virtually all subsidy if the proposed amendment were applied to them in these trades and could not agree to this provision applied generally to the Ro/Ro vessels in all trades.

There is simply no comparison between the effect on the D-9 vessels by such a provision, given their committed use, and the Lykes Ro/Ro vessels were they required to accept such a provision on their likely trade routes. For further elaboration of this question see our response to question No. 2.

Question No. 2. Would you accept the requirement that your Ro/Ro vessels abate subsidy in proportion to the tonnage of premium rated preference cargo and military cargo, carried when operated on the route where the 12 Sea-Land vessels will be used, that is in service from the U.S. West Coast to Asia? That route is in your subsidy contract, isn't it?

Answer. Lykes does have authority for subsidized sailings from U.S. West Coast ports to Asia; therefore, the Lykes Ro/Ro vessels, if qualified by S. 2510, could be operated on the same route as the Sea-Land D-9 vessels.

The Lykes subsidy contract MA/MSB 451 treats all ships in the Lykes fleet as interchangeable among the various trade routes. Lykes would agree to the same restrictions pertaining to the D-9 vessels when its Ro/Ro vessels are operating between U.S. West Coast ports and the countries/ports served by the D-9 vessels.

Question No. 3. You stated that your Ro/Ro vessels were converted in 1981 in a U.S. shipyard at a total cost in excess of $13,000,000. Can you tell us what yard did that conversion and whether any construction subsidy or Government guaranteed Title XI financing was provided for this conversion?

Answer. The two Lykes vessels were converted to meet U.S. Coast Guard requirements in the spring of 1981 at the Bethlehem Steel Co. Baltimore Division, Key Highway shipyard. No construction subsidy money or Government guaranteed Title XI financing was utilized for their acquisition or conversion. The conversion costs were borne entirely by Lykes.

Question No. 4. You state that MarAd and the Navy prevented the sale of your Ro/Ro vessels to friendly foreign owners which would involve transfer to Taiwanese flag. Can you tell us when that occurred and in what form this prohibition was conveyed to Lykes?

Answer. On 14 December, 1987, Lykes made application to the Maritime Administration to permit the sale of the American flag Ro/Ro vessel M.V. LYRA* to Taiwan Feeder Services, Ltd., a Republic of China corporation, and the resulting transfer of the M.V. LYRA to Republic of China flag. A commitment to make the M.V. LYRA available to the United States on request, in a national emergency, was made by Taiwan Feeder Services, Ltd.

On 4 January, 1988, R.O. Thomas, Director of Resources and Policy Evaluation Office of the Assistant Secretary of the Navy (Shipbuilding and Logistics), advised MarAd that the Department of the Navy considers the Ro/Ro vessel, LYRA, to be a vital military sealift asset and should not be sold foreign.

On 4 March, 1988, Dennis R. Shaw, Deputy Under Secretary of the Navy [Policy], advised MarAd that the M.V. LYRA was a vital sealift asset and should be retained under American flag.

On 21 March, 1988, John Gaughan, Maritime Administrator, advised Lykes that a determination has been made that the M.V. LYRA is a vital military asset and approval of Lykes' application of 14 December, 1987 was denied.

M.V. LYRA and M.V. CYGNUS, sister ships, are the two American flag foreign built Ro/Ro vessels that Lykes requests be included in the legislation qualifying foreign built vessels for operation under Operating Differential Subsidy contracts.

Question No. 5. If the two Lykes vessels are made eligible for subsidy, do you feel ODS contracts can be obtained in light of the Administration's policy? If subsidy is not granted, what will Lykes do with these vessels?

Answer. If the two Lykes Ro/Ro vessels are made eligible for subsidy they would be incorporated into our existing ODS contract as replacement vessels for vessels that have been withdrawn in the past year. These Ro/Ro vessels are crewed by 22 men, thus they would replace vessels which had been manned by 36 men. This is the measure of improvement in subsidy cost that Lykes and others seek on a broad scale through a foreign building amendment.

If subsidy is not granted, Lykes will continue to seek spot employment for these vessels and/or charter opportunities to MSC which would, as in the past, result in the continuous lay up of one and the sporadic employment of the other. The net effect is, of course, a serious financial drain on Lykes.

Question No. 6. Do you believe enactment of this legislation will impede the prospects for comprehensive ODS reform?

Answer. The enactment of S. 2510 could enhance the prospects for the passage of ODS reform legislation if the provisions of such legislation are not detrimental to the operations of the presently subsidized carriers. it should be noted that the Administration's legislative proposal for ODS reform met with strong opposition from carriers and Labor because the effect was so damaging to carriers.

ODS reform is an ambiguous term. To come in Government driven by the pressures of the Office of Management and Budget, ODS reform means a reduction of the maritime budget regardless of effect. The Administration's comprehensive subsidy reform legislation presented some months ago would, among other provisions, have imposed a limit of twenty vessels which an ODS contractor could operate under any contract. Subsidy was to be repaid for each ton of military or preference cargo carried regardless of the level of rate and its relationship; to the rates of foreign flag competitive carriers. Real cost differentials between U.S. carriers and their foreign flag competition now covered by contracts, such as the higher costs of repairs in U.S. shipyards, were to be forced back on the carriers as were the higher costs of liability insurance for crew. In sum, the Administration's comprehensive ODS reform proposals were damaging to the Merchant Marine and were opposed by both carriers and Labor.

Comprehensive reform should provide the means for substantial reduction in per vessel subsidy cost by permitting the replacement of older highly crewed vessels with modern reduced crewed vessels purchased at world prices from U.S. yards or alternatively permit replacement by building in foreign yards. Trade route limitation currently in ODS contracts has bankrupted subsidized carriers when conditions change in their operating area and they have no alternative routes to ply, this must be liberalized. These are reforms that will strengthen rather than debilitate the liner industry.

The passage of S. 2510 will combine the interests of Sea-Land with the currently subsidized carriers providing an incentive to seek progressive ODS reform on a unified industry basis.

Senator BREAUX. Thank you very much, Jim. Mr. Parks?

STATEMENT OF RICHARD V. PARKS, PRESIDENT, FARRELL LINES INC.

Mr. PARKS. Thank you, Mr. Chairman. Before going to my testimony, I would like to just confirm a statement that was made. We have in principle reached an agreement with the Great Atlantic and Pacific Shipping Company that this testimony will be given on the basis of Farrell Lines standing on its own. There are many approvals that will be needed, and so this testimony will be given based on Farrell being separate.

I am Richard Parks, President and Chief Operating Officer of Farrell Lines Incorporated. I appreciate the opportunity to present our views on S. 2510 legislation.

As we are all aware, the most critical need facing our industry is capital cost parity. Because the Construction Differential Subsidy program has ended, Farrell Lines cannot acquire new vessels for operation under ODS contracts. Yet we desperately need to replace small inefficient vessels with modern diesel vessels with automated cargo systems.

Without these new vessels, Farrell will not be able to compete against foreign flag vessels or other American carriers that receive special legislation to assist them but not us.

Operators have received some limited authority in the past to acquire vessels competitively, and have used these ships to assist in the development of sophisticated and efficient operations, including the most advanced intermodal operations in the world.

We could go on and on for the need for additional vessels for national defense as well as retention of U.S. jobs for seamen. That has been said by many, time and time again. What is inportant is there are other companies, including Farrell, who need to replace antiquated tonnage. By establishing legislation for only one carrier we may enhance one and hurt many.

In 1936 when U.S. build requirements were first imposed, a Construction Differential Subsidy program which provided subsidies to U.S. shipyards was in place to protect ODS operators from paying for the higher cost of U.S.-built vessels.

However, in 1981, after 45 years of continuous funding, the Reagan Administration and Congress eliminated the CDS program because, one, it was ineffective in compensating for ever escalating cost differences between U.S. and foreign built vessels, and two, the expensive naval buildup program had created ample work for U.S. yards.

The CDS program ended and no corresponding change in the ODS program to remove the U.S.-built requirements. The elimination of CDS, however, did not eliminate the need to replace vessels nor did it eliminate the ODS restriction placed on U.S. operators.

Although the typical ODS contract allows the operator to defer its obligation to replace vessels when CDS is not available, that operator in order to compete and survive in the international arena must still replace its vessels.

There was a window of opportunity which granted those carriers the possibility build foreign and receive ODS. Not all carriers could, at that time, apply due to many factors, and Farrell was one of them.

Now today, many years later, we are still handicapped by the decision to suspend the CDS program in 1981. This bill, S. 2510, which will authorize a single non-subsidized carrier to have foreign-built vessels become eligible for subsidy, appears to be a form of build, charter or acquire program which should be revised to include not just one but all ODS operators.

Farrell Lines could agree to a form of legislation which allows a carrier to have its foreign-built vessels become eligible for subsidy, provided Farrell is authorized to build, acquire or charter foreign vessels to fill its subsidy contract requirements.

Thank you, Mr. Chairman.

Senator BREAUX. Thank you, gentlemen, for your testimony. I appreciate all of you being here.

Mr. Hintz, let me, I guess, start off with you, on behalf of Sea-Land. There are some who would point out that Sea-Land made corporate decisions, maybe before you were involved, to purchase 12 of the D-9s, all of which were foreign-built. And that was a corporate decision, that the ships were acquired at a much lower price than if they had been built in a U.S. yard.

And Sea-Land did so, knowing that, while they were going to pay a lot less for those ships, they would not receive any operating subsidy. But here is Sea-Land now today saying, well, we changed our mind. We had the advantage back then, now we want another advantage. We want to be able to get the American taxpayer to subsidize our operations of those foreign-built ships.

No new ships are going to be built under this proposal. We are only going to be using the ships that are currently in the dwindling U.S. fleet. So, as a policy, what do we get out of this from a national policy? Sea-Land gets operating subsidy on less expensive foreign-built ships.

Mr. HINTZ. Well, as you say, sir, I was not involved in that decision. I really have not gone back through a lot of history of Sea-Land, but it is my understanding that, when the ships were built and Sea-Land was an unsubsidized carrier, it took that action because it had received certain benefits.

And, again, not being an expert in the industry, I understand that some of the benefits and freedoms that were available to the unsubsidized carriers began to dissipate. In 1981 and 1983, for example, when CDS went out and when subsidized carriers could go in and apply for foreign building and other special rules, that took away some of the freedoms and advantages of being an unsubsidized carrier.

Senator BREAUX. But how do we handle the policy question, from the Congressional standpoint, of saying here is a corporation that knew what the rules were and decided to take one course of action which had certain major advantages plus less expensive ships?

But now, a few years later, they say, well, we want to keep those advantages we had by buying cheaper ships, foreign built, but we also want the added advantage of $50 million a year in added subsidy.

That is a policy question we have to wrestle with. What do we get from the industry if we are to allow this to happen?

Mr. HINTZ. Well, I think the rules have changed. I think that is one point that has to be taken into consideration.

I think the other thing is that from the standpoint of the Merchant Marine, if we get all through the process, we gain some very modern and efficient ships to defend the Nation.

Senator BREAUX. Let me ask another question that Senator Wilson raised—and please feel free to consult with your counsel and your experts on this. That was the question of whether a company like Sea-Land, which is a non-subsidized corporation that charters ships that have the benefit of ODS subsidy, would Sea-Land be absolved of the requirements and restrictions that a subsidized carrier would normally have to meet in order to operate?

Mr. HINTZ. Mr. Ragan will answer that question.

Mr. RAGAN. Senator, in answer to your question, I think the clearest answer would be that we will adhere and be bound by all of the norms, the rules, and the criteria of the 1936 Act.

Senator BREAUX. In other words, are you saying that Sea-Land would not seek any waiver of any of the requirements that subsidized carriers have to meet with regard to using their subsidized vessels?

Mr. RAGAN. Whatever the norms are in the 1936 Act, we will follow the 1936 Act. They are there, they are established, and they are on the books. We know what they are, and that is what we would follow.

Senator BREAUX. I guess what you are saying, and am I correct in interpreting that you would be saying that whatever requirements or provisions that a subsidized carrier has to follow or has to meet, that Sea-Land, as an unsubsidized company that has chartered subsidized liners, that you would be meeting the same requirements as those subsidized carriers in the operation of those subsidized liners?

Mr. RAGAN. I would not want to read in precisely the way you are putting that.

I said we would follow the norms of the 1936 Act.

Senator BREAUX. See, that is a very important question in the sense that, assuming the Committee would go forward with that, in addition to giving Sea-Land $50 million or so a year of subsidy, are we opening a window for that company, your company, to get additional advantages that would not be available to a company that is a traditional subsidized company? Because if that is the case, I assure you that it is going to require a great deal more explanation than I am getting right now.

Mr. FINNERTY. Senator Breaux, I would just like to respond that, in addition to Bill's comment about full compliance with the 1936 Act, and as Mr. Hintz stated in his testimony, the proposal is subject to the necessary approvals from the Maritime Administration. Obviously anything that would be accomplished in the proposals that are presented to

the Committee could be accomplished by any American flag shipping company.

The law is not going to affect people differently. The law will be available to all carriers, and it will apply to carriers in the same way. It is the law of the land.

Senator BREAUX. Okay, are you saying, then, that when the vessels in question apply for ODS subsidy, that requirements, conditions, restrictions, etcetera, that MarAd imposes on the approval or conditions for approval of ODS would be carried through to Sea-Land as the charterer of those vessels?

Mr. FINNERTY. I think that the operator of vessels would have to comply with whatever restrictions MarAd would require of them, and I think that those restrictions and requirements would have to be provided for in the context of the charter operating those vessels, so that the law would be abided by.

Senator BREAUX. Okay, I guess what I am hearing—thank you. I think that helps move it toward a clear understanding. From Mr. Amoss, on behalf of Lykes, I guess George, Mr. Hearn, on your behalf, is that you will agree to go along with this legislation, as long as your company can also have some ships made eligible for ODS? I guess perhaps I am going to hear that everybody can go along with the legislation as long as we make all foreign built ships eligible for ODS.

Mr. HEARN. That is not my position, Mr. Chairman.

Senator BREAUX. Is that just Lykes' position? You are already taken care of with ODS?

Mr. HEARN. I have the traditional problem. I think Mr. Parks said, in testifying here for Farrell, as I always have on behalf of Waterman, we are staying with our traditional position that we do not object to anybody getting ODS, a common carrier in any one of these trades.

However, if a foreign-built ship is going to be operated by another American flag common carrier receiving ODS and it is put in our trade where all we have are our American-built ships that were built in American yards, and are not diesel powered but they are gas powered, we cannot compete with those ships.

So, what I am saying to you is that if someone needs those ships, as these are testified to in the trans-Pacific, as far as we are concerned, if it does not affect or hurt Waterman, we do not have an objection. We are not greedy about something like that.

But if any of these ships or any add-on ships by other companies here today are added to this bill and are put in our trade, we will be out of business, because we cannot compete with a foreign built diesel ship.

Senator BREAUX. You are not going to have the problem with Sea-Land, you are going to be part of them.

Mr. HEARN. As I said, I was testifying as to our traditional position. As far as I know about what you have just brought up, there is a memorandum of agreement, Mr. Chairman, and quite frankly that is about all that I can say on it.

Mr. AMOSS. Mr. Chairman, may I comment on your remark about our request for the addition of our two foreign-built roll-on/roll-off ships in this legislation? I do not believe there are any other similarly-situated carriers who have acquired foreign flag vessels that are not eligible for subsidy in the liner business, under the American flag.

Senator BREAUX. Probably some would like to be.

Mr. AMOSS. "Would like to be" can encompass almost anything. That is what I think we are dealing with, and Sea-Land has 12, Lykes has two. We think that there are a lot of reasons why ours are even more qualified to be included, considering that they were converted to American flag at a considerable cost in U.S. yards, that they are considered first line maritime assets vital to American defense requirements.

Senator BREAUX. Did you have CDS when you were converting them?

Mr. AMOSS. No, we had no CDS, nor did we borrow anything under the Title XI program. That was strictly done with corporate funds.

Senator BREAUX. Senator Inouye?

Senator INOUYE. Thank you very much, Mr. Chairman. Before proceeding, I received a call from Senator Stevens, the co-author of this measure, requesting that I advise the Committee that he is unavoidably tied up with a Government Affairs Committee mark-up. It is a very important mark-up, and he wanted to be here. He will try to attend as soon as possible.

First, I would like to call upon Mr. Amoss. I have been listening to your suggestion that an amendment be made to include two roll-on/roll-offs, foreign-built. If this were adopted, would you also include a trade route protection for Waterman?

Mr. AMOSS. Yes, whatever Waterman's corporate form may be. I do not know that I would be willing to make that statement when Waterman is part of Atlantic and Pacific Shipping, because I really do not know what that form might take.

As I understand it, Waterman may be an operating entity, encompassing many, many services. But given the Waterman we know today, yes. We would be able to work something of that nature out.

Senator INOUYE. Mr. Hearn? Does that satisfy your concerns?

Mr. HEARN. Well, trade route protection—we would then be saying that none of these foreign built ships, or if there were any other foreign built ships approved under this bill or made eligible under this bill, could not operate on our trade route.

Mr. AMOSS. May I interject that these are American flag ships.

Mr. HEARN. Excuse me. A foreign-built ship. I am sorry, Mr. Amoss. I am talking about a foreign-built ship, not a foreign flag ship.

Senator INOUYE. Thank you very much. I would like to now call upon Mr. Hintz. I am certain that my distinguished friend from California will be asking you a lot of questions about Great Atlantic and Pacific, so I will not touch upon this.

I gather that one of the major objections to this measure is that Sea-Land, as an unsubsidized operator has greater operating flexibility than other companies like APL, who is a subsidized operator. However, it

seems to me that in the past five years, APL has been given a good deal of operating flexibility, which usually goes with being an unsubsidized operator, and I would like to ask you if the following observations are correct.

Did MarAd recently approve all of the foreign flag feeder requests that were made by APL?

Mr. HINTZ. I believe they did, yes sir.

Senator INOUYE. Did MarAd approve APL's use of foreign flag line haul vessels when APL sought such authority? And did you object to it?

Mr. HINTZ. I am not sure if we have objected, but I do believe they obtained the authority. I think we did object, yes, sir.

Senator INOUYE. MarAd has redesignated the trade routes so as to broaden them into trade areas. Can APL now seek authority to take advantage of that trade route broadening?

Mr. HINTZ. As far as I understand, yes, sir.

Senator INOUYE. Did APL support MarAd's deregulation of unsubsidized sailings by subsidized operators?

Mr. HINTZ. Yes, I believe so.

Senator INOUYE. With APL's construction program in foreign yards under Section 615 and acquisition of foreign vessels under Public Law 98-151, did APL meet all of its replacement obligations until 1994 when the President Cleveland reaches 25 years of age?

Mr. HINTZ. Yes, I believe so.

Senator INOUYE. Did APL purchase 615 chits from C.C. Wei for the 615 authority through which its C-10 vessels were to qualify for subsidy?

Mr. HINTZ. I know they acquired them, sir. I am not sure who they acquired them from. I believe that is correct, though, the name you use.

Senator INOUYE. From these examples, would you say that APL has had a good deal of operating flexibility?

Mr. HINTZ. Yes, sir.

Senator INOUYE. I would assume that even under the best of circumstances, your operating costs have been higher than your foreign flag competitors', is that correct?

Mr. HINTZ. Yes, sir.

Senator INOUYE. However, you have been able up until now to operate at a corporate profit because of your shoreside operations, is that correct?

Mr. HINTZ. I think essentially it is, yes, sir.

Senator INOUYE. Would you say that in recent years, as a result of the integrated foreign transportation systems like those run by Evergreen, that they are now a rival that would exceed you in corporate efficiency?

Mr. HINTZ. Yes, sir, I think they have all become much more efficient and are striving for more efficiency. So I think the differential has been narrowed and possibly exceeded.

Senator INOUYE. Would it be possible to continue competing with Evergreen without subsidies?

Mr. HINTZ. No, sir, I do not believe it is in the long run.

Senator INOUYE. May I ask the other shipping operators, do you believe this Great Atlantic & Pacific arrangement to be in the best interests of our nation as envisioned under the Merchant Marine Act?

Mr. HEARN. Are you directing that question to me, Senator Inouye?

As I said, on behalf of Waterman, I do know that this is in the very early stages. However, from what I do know about the agreement, I think it would be in the best interests in the United States, certainly in the best interests of the transPacific as well as the transAtlantic trades.

Excuse me. Waterman has experience. We are running three ships, as you know, under charter to the United States Navy and have been doing so for the last six years. So I would think that we have qualifications, and certainly I do think it is in the best interests of the United States.

Mr. PARKS. Senator, I would like a try at that, also.

Certainly without an effective operating maritime policy that we have been trying to get maritime reform for almost seven years now, the long term stability of some of the companies, and particularly Farrell, without the ability to acquire additional vessels would be in jeopardy.

This assuming that it goes as expected, I think will certainly enhance the maritime industry in the future.

That I must state is not necessarily the primary objective of Farrell Lines when we went into it. The primary objective was to protect fiduciary responsibility and protect the stockholders of Farrell Lines.

Mr. AMOSS. Senator Inouye, Lykes has consistently since 1980 and in every instance supported reform of the Merchant Marine Act in order to permit all U.S. flag operators to be subsidized, regardless of whether they are competitors, whether they pose additional competition or not. We believe that is the way it ought to be.

So therefore, we would support this change.

Senator INOUYE. Mr. Amoss, I recall the time and effort that you have personally put into pressing for reform all these years, and I know it has been a frustrating experience for you, but I hope I am here long enough to be able to say that Jim Amoss and I were able to do something about it.

Mr. Chairman, thank you very much.

Senator BREAUX. Thank you.

The Senator from California.

Senator WILSON. Thank you very much.

Thank you, Mr. Chairman.

Mr. Hintz, let me ask you a couple of questions. The Senator from Hawaii is correct in his prediction. I do have an interest in the proposed merger of Waterman and Farrell, well, not merger but the acquisition by this new company, Great Atlantic & Pacific.

I suppose before I ask you these questions, I should ask Mr. Hearn and Mr. Parks whether they are authorized to speak for more than Waterman and Farrell.

Are either of you authorized to speak for Great Atlantic & Pacific?

Mr. HEARN. I am not, Senator Wilson, no.

Mr. PARKS. I cannot speak for Great Atlantic & Pacific Shipping Company. I can speak for Farrell Lines.

Senator WILSON. You can only tell me that your principals think that it is in the best interests of the United States to go forward with this legislation.

Okay, again, Mr. Chairman, I think there is a real hole in the record, and I think that the inability of Mr. Hearn or Mr. Parks to testify on behalf of A&P makes that clear.

Let me then go to the testimony of Mr. Hintz, Mr. Hintz, you make the statement "Last week the Great Atlantic & Pacific Shipping Corporation, A&P Shipping, announced that it had agreed in principle to a series of transactions which, if approved by the Maritime Administration and the Justice Department and consummated, will significantly strengthen the competitive posture of a major segment of the U.S. flag liner industry. The proposed acquisition by A&P Shipping, enactment of S. 2510, and charter arrangements that would be entered into between A&P shipping and Sea-Land Service, Incorporated hold great potential to finally begin to correct the deficiencies in U.S. maritime policy."

Now, you say that three elements are involved there: The proposed acquisition by A&P Shipping; the enactment of S. 2510; and charter arrangements that would be entered into between A&P Shipping and Sea-Land.

I assume that the reform to which you refer is an arrangement whereby the chartering between A&P and Sea-Land would allow Sea-Land to operate at a great competitive advantage in terms of rates because Sea-Land would continue to be technically unsubsidized, and therefore not by either present law or by anything that I heard counsel volunteer, operating under the restrictions that are required of a subsidized operator, even though you would be getting a time charter rate from A&P that would reflect the fact that they are subsidized.

Is that the great advantage?

Mr. HINTZ. No, I am not sure that is an advantage.

Senator WILSON. Well, if it is not, what is?

Mr. HINTZ. I think the fact that we will file with the Maritime Administration and they will have to make some rulings, as Mr. Gaughan said, that those ships will come back to us with all of the restrictions that may be required of the Maritime Administration, and that we would obviously have to adhere to.

I think the advantages of this, it makes us, Sea-Land more competitive in the foreign marketplace. I think A&P, which will be a separate company and operate separately, also adds strength to some of the companies it is acquiring and working with. And those are the positives that I allude to in my testimony.

But I think that Sea-Land will really get no great operating advantages because of what will be approved by MarAd. I think what the administration gains is that, as we have said, we will follow in essence a

model contract, we will take wages only in the subsidy. We only have a 21 man crew. We will go along with eliminating the double subsidy, and I think some of the numbers that were quoted by others indicate that if these ships are subsidized, they would be subsidized at the lowest level in the ODS fleet of any ship.

So I think there are benefits both to the budget and to all of the companies involved.

Senator WILSON. Well, just how do you see that operating? Is it not a fact that Sea-Land would continue to be unrestricted because, technically, it would be unsubisized?

Mr. HINTZ. Well, again I say that our operation would not change in terms of the ships that remain with the Sea-Land Corporation. As far as those that again would be chartered, I think, and I am no expert on legislative and administrative, that we would be subject to the approvals of the MarAd, whatever they may be, whether there are restrictions or no restrictions.

Senator WILSON. And that is uncertain, is it not?

Mr. HINTZ. It is uncertain to me.

Senator WILSON. Certainly the possibility exists as a result of this arrangement, and I must say, if it was Mr. Ragan's idea or Mr. Finnerty's, I congratulate you, you are ably represented by skilled legal counsel. I think this is a very ingenious idea, and it seems to me the distinct possibility is that if MarAd were to approve the continued receipt by a subsidized operator of the subsidy, and not restrict those who then charter from that subsidized operator, that you have got the best of all possible worlds. You have got a situation in which someone suffering no restriction has bought foreign-built vessels at a substantially lower cost, and can operate them and other vessels without restrictions because, presumably they are without subsidy, but at the same time is able to charter those same boats back at a much reduced rate because, in fact, the charter operator, in this case, A&P, would be receiving the subsidy.

Now, you cannot tell me that that isn't going to happen, and Mr. Gaughan cannot tell me that. The only way we can be assured it will not happen is if Congress acts to prevent it.

Mr. HINTZ. Well, again, we go back to the statement we made that we may be unsubsidized and get certain freedoms, but those freedoms have been taken away by legislative fiat and other things.

I might also add that the A&P is an independent company, and that we will have to negotiate rates with, and when you talk about a level playing field, the fact that it is a private company and an entrepreneurial company, they will have certain costs, return requirements, so that on the charter arrangements we may or may not—I doubt if we ever would. It would be almost impossible to receive any type of rates lower than other companies in the industry because they have their operations to conduct, they have their overhead, they have their required return on investment, so that when we talk in terms of the subsidy that may be coming through in these charters, it would probably be much less by another degree than it is now at the $2 million level.

So I do not think we are getting all those advantages. And again, I think as some of the questioning has indicated, a lot of the freedoms we had, the subsidized carriers have got administratively or otherwise. I do not see that abating. So I do not really think we are putting them in a bad situation.

And I think if we are, they have had a lot of money for a long time that we did not. We got freedoms but we did not get money.

Senator WILSON. They have also had restrictions, Mr. Hintz, that you have not had.

Mr. HINTZ. Well, I know but——

Senator WILSON. That was the whole idea, that if you get the money, if you get the subsidy, you are under the restrictions, and if you do not take the subsidy, you are not under the restrictions.

Mr. HINTZ. Well, I think, sir—and again, I am not expert, but since 1981, the restrictions have been pretty weak restrictions, and our tradeoff—and I do not know the history of the Sea-Land decision, but we took freedom for no subsidy. So there must have been some tradeoff there.

In the meantime, since 1981, the other companies have been picking up these advantages while also picking up the check, and we have not had the advantage of the check.

Senator WILSON. Mr. Hintz, or if you prefer, perhaps your counsel, could you clarify the significance of the phrase on the bottom of page 5 of your statement referring to "any other subsidized vessels of a contractor who implements ODS eligibility under S. 2510?"

Are other vessels besides your 12 D-9Js eligible for ODS under the bill?

This comes back to Mr. Finnerty's statement that the law would apply to all. I can't think of any others to whom it would apply.

By the way, while you are huddling, let me just say, having already earlier commended my friend from Hawaii for his candor, that he has made it ery clear that this is a bill that would explicitly benefit Sea-Land. He has not pulled any punches about it. I do commend his candor. That does not alter the fact that it is special interest legislation. That is my objection to it.

Mr. FINNERTY. Senator, in response to your question about the language on page 5, that language refers to Sea-Land or in effect Waterman's willingness under this arrangement to accept as one of the goals of the administration's ODS reform, not only as Mr. Hintz said earlier, 21 in the crew as a subsidizable level, wages only, but also no double subsidy, not only on the 12 D-9s, but also on any other vessels that would be subsidized as a consequence by that operator, which in this case might be the Atlantic class ships that operate in the Atlantic Ocean.

So those administration goals would in effect apply to all of the vessels, not just the 12 D-9Js.

Senator WILSON. Mr. Finnerty, what you are saying is, as you have here, that you do not object to the MarAd policy and to the Inouye amendment that would not permit the subsidy to be paid on military

cargo and on civilian preference cargo, but my question really does not relate to that. You have answered a question I did not ask.

My question really is would S. 2510 apply to any vessels other than the 12 D-9Js that Sea-Land owns?

Mr. FINNERTY. And I think, Senator, the answer is it depends——

Senator WILSON. Let me put it this way. There is an interesting description in here. We talk about ships that are under ten years in age, and more than 20 thousand deadweight tons.

What other ships are there like that?

Mr. FINNERTY. The point of the explanation I was offering is that the amendment of the bill could conceivably, depending upon how it is worded, apply to other than the 12 ships that are involved in the bill at present. It could apply the restrictions——

Senator WILSON. It does not presently, does it?

Mr. FINNERTY. I do not know what the amendment says. The bill as introduced does not apply to any other ships than the 12.

Senator WILSON. Thank you.

You refer, Mr. Hintz, on pages 8 and 9 of your testimony to the anticipated charter arrangements between Sea-Land and A&P, and this really comes back to my earlier question, but candidly, I did not get a clear, crisp answer.

Why are those charter arrangements important to Sea-Land? If in fact you think that MarAd may go the other way, then what is the benefit?

Mr. HINTZ. I am not sure if I will be responsive. I do not know if I understand the question.

Senator WILSON. Well, let me try to be more precise to be fair to you.

Do you believe that the charter arrangements will allow A&P to apply for ODS on the 12 vessels and thereby exempt Sea-Land's coastwise and foreign flag operations from review under the Act?

Mr. HINTZ. I am not that smart. I do not know if they are exempted or not. I can comment about the charter.

Senator WILSON. Let me put it this way. If not, what benefit is there from the arrangement?

Mr. HINTZ. We get reduced vessel operating costs, if I understand the question. That is what we are striving for.

Senator WILSON. That is another way to put it. You have gone right to the heart of it. That is the goal.

Mr. HINTZ. Well, that is the goal of what we are trying to do, yes.

Senator WILSON. But you are going to receive a double benefit is it not true, by virtue of having no restrictions in terms of your operation and a substantial subsidy that will allow not the operator but the charter operator to charter them back cheaplyto you?

Mr. HINTZ. I do not think I can answer that question. If I was listening carefully, I do not think Mr. Gaughan could answer it. I think we are going through a procedure where everything will be reviewed, and something will fall out from that procedure. But whether we can operate unlimited or we have all these special benefits, I do not think anyone who has been asked that question has been able to answer it, and I certainly cannot because I am probably the least knowledgeable about the subject.

Senator WILSON. Well, let me put it this way. Would you object to an amendment to S. 2510 that denied such an exemption so that your operations as owner-operator or time charterer would be subject to the Act?

Mr. HINTZ. Again, I think that is a very general question. I will let my lawyers—again, I would have to see the amendment. I would not want to comment on a hypothetical.

Senator WILSON. Mr. Ragan, let's concentrate on the time charter aspects of it.

Would you object to an amendment that would affect your client by denying to him as a time charterer the advantages that he might otherwise gain under this arrangement?

Mr. HINTZ. Sir, could you cite—maybe I should not jump in here.

Can you cite the specific advantage we would receive so we could address it specifically?

Senator WILSON. Yes, reduced rate because of the fact that you are chartering from someone who receives the subsidy.

Mr. HINTZ. That is the objective. I do not see the advantage. I do not relate that. We are probably not looking at it in the same light. That gives me pause.

Mr. RAGAN. I do not follow the question.

Senator WILSON. I really do not think it is that complex a question.

I think the Chairman understands.

Senator BREAUX. Is the Senator finished for the moment?

Let me get in, then. I have got another question. The buzz words we are going to hear in this hearing, and later on in discussing whether we move the legislation or not, is buzz words like level playing field, unfair advantage, and those really need to be addressed if we are going to be able to do anything with the legislation, certainly to my satisfaction, from my perspective of what I do.

There are those who will argue that you are going to have, if this legislation were to pass, a novel type of shipping company, unique in this business, which is half subsidized and half unsubsidized.

I think Sea-Land has tried to make it very clear that you intend to operate your chartered subsidized vessels under the requirements of a subsidized carrier. At least that is what I am hearing from you, that whatever conditions and terms that MarAd would require those subsidized vessels to have to meet, if you chartered those vessels in that condition, then you would have to as an operating company also meet those requirements.

But the other half of your company would be operating unsubsidized, and with no restrictions. So what you have is something that no other company has. You are half subsidized and half unsubsidized and free to do what you want with those ships.

They will argue that that is an unfair advantage and it disturbs the level playing field and we should not use government money to do that.

How would you respond?

Mr. HINTZ. I guess I will not go into some of the things you said about half our company, because A&P is a separate, independent company. But I think the main point is that what we have tried to accomplish could be accomplished by any other shipping company, so they are not disadvantaged.

We are here, we are maybe here first. But other people can apply the same approach we did.

Senator BREAUX. The point is, you are going to be something that nobody else is, half and half. You are going to have 18 vessels—let me ask this.

If the legislation would pass, how many ships would you have that would be eligible for ODS and how many would you have that would not be, or all of them would be?

Mr. HINTZ. We would have, I believe, 33 to 36, but some of those are operating—and you can correct me if I am wrong, Pete—in the domestic trades. And as we state in my testimony, we would not seek ODS for those ships.

Senator BREAUX. So I am correct then in saying that some of your fleet would be subsidized, some of it would not be?

Mr. HINTZ. Yes, sir.

Senator BREAUX. Others would argue that that is an unfair advantage, that no other company has that right. APL as I understand it, all of their ships are subsidized carriers now and all of them are subject to whatever requirements a subsidy requires them to do.

So they say that by having a portion of your fleet subsidized and a portion not, you are getting an unfair advantage.

Mr. HINTZ. Ours are in domestic commerce, though. APL's ships are in the foreign commerce. So the ships we have that are eligible, we said we would waive ODS because they operate in the domestic trade.

So the only subsidized—and again, I do not mean to be quarrelsome or correct you, but we technically have no subsidized ships. We are getting ships from A&P at a reduced operating rate.

Senator BREAUX. There is no question that Sea-Land would get the benefits of the subsidy?

Mr. HINTZ. We see the benefits, but we are not being subsidized.

Senator BREAUX. That is even better.

Mr. HINTZ. Again, our other ships operate in the domestic trades, and we have stated in here that we would not seek subsidy on those. And again I just repeat, Senator, that again, people say it is unfair, but like other things, it is open to anybody.

There is no legal bar to anybody being as creative as they want in trying to accomplish what they want for their company. So to say it is unfair, I really do not think it is. They have to maybe become creative and do something that they think is in their best interests.

Senator BREAUX. Senator Inouye.

Senator INOUYE. Thank you very much.

The Great Atlantic & Pacific Shipping Corporation has been formed and you are now in the process of arranging for the chartering that you have just described here. Is it not true that the arrangement or the agreement or the contract will be subject to government scrutiny, approval, and condition?

Mr. HINTZ. Yes, sir.

Senator INOUYE. Can you describe what agencies will have jurisdiction over this agreement, contract, or arrangement?

Mr. HINTZ. Sir, I believe as you go back and look at the entire transaction, the first step is for the A&P company and for Waterman and Farrell, who I understand have confidentiality agreements but no fixed agreements, to resolve their issues and see whether A&P will be formed or not.

I then assume that A&P will have to apply to MarAd. They will also have to file under the Hart-Scott-Rodino to get clearance at the Justice Department.

I am not sure if there is any other agency that they will have to do. But for that part of the transaction, those are the steps they will have to take.

Having concluded the arrangements, assuming that they do, with Farrell and Waterman, then we will sit down, I would assume, our people, and work out the rates in terms of the charter. And those too would be subject to at least MarAd approval.

I think that is about the limit of it. So there are quite a few approval processes in the way.

Senator INOUYE. When the government assumes jurisdiction over the transaction, can it also place conditions upon it?

Mr. HINTZ. Yes, sir, I believe it can.

Senator INOUYE. Does Sea-Land own any stock or intend to own any stock in A&P?

Mr. HINTZ. No, sir. A&P will be a completely independent company. We operate with them on an arm's length basis. They have hired their own chief executive officer and they are completely independent to Sea-Land.

Senator INOUYE. Are any of your officers serving on the A&P staff?

Mr. HINTZ. No, sir.

Senator INOUYE. If this measure is passed and becomes law, would you be entering the Hawaiian trade also, the twelve ships?

Mr. HINTZ. No, sir, not with the twelve ships.

Senator INOUYE. Well, that should make the Hawaiians happy.

Mr. HINTZ. Mr. Ragan points out that the ships were built abroad and are not qualified for domestic service.

Senator INOUYE. Mr. Chairman, I have other questions I would like to submit to the panel members if I may.

Senator BREAUX. Without objection, we will ask the members to respond to the Senator's questions.

Any follow-up?

Senator WILSON. Mr. Chairman, I have other questions for the record. I will not take more time of the panel, so that we can get on to the other witnesses.

Senator BREAUX. Okay. We probably will all have some additional questions that we will ask to be submitted and you all can respond to.

We appreciate your being here and thank you for your presentation.

Let us invite up the second panel: Mr. Timothy Rhein, President of APL; Mr. Erik Johnsen, President of Central Gulf; Mr. Leo Collar, President of Crowley Maritime; Captain Warren Leback, Senior Vice President for Puerto Rican Marine Management; and John Stocker, President of Shipbuilders Council.

We have got a panel we want to complete. I know you have a lot of material, including charts and some statements. I will encourage people to try to summarize so we can get to the questions.

Mr. Rhein, we have you first. We are pleased to receive your testimony.

STATEMENT OF TIMOTHY J. RHEIN, PRESIDENT AND CHIEF OPERATING OFFICER, AMERICAN PRESIDENT LINES, LTD.

Mr. RHEIN. Good afternoon. I am Timothy J. Rhein, President of American President Lines.

APL operates a fleet of 23 U.S. flag liner vessels under the operating-differential subsidy program. We have a vital interest in all proposals which relate to the ODS program. We strongly oppose S. 2510 in its current form. We ask that it be amended so that we can support it. Let me outline our reasons.

Current law does not allow U.S. flag operators to modernize their fleets by purchasing foreign-built vessels for operation under U.S. flag and receive ODS to cover the higher costs of U.S. crews. Therefore, U.S. carriers receiving ODS have broad parity with their foreign competitors in terms of operating costs, but not in capital costs.

U.S. carriers not receiving ODS have capital cost parity, but not operating cost parity with foreign carriers. This legislation would solve this critical problem for only one carrier, Sea-Land, by making its twelve D9 foreign-built vessels eligible for ODS.

This single-company legislation would facilitate payment of millions of dollars of subsidy to one operator, but that is all it would do. So our first objection to S. 2510 is that it does not help all operators compete more effectively with foreign companies, and this nation clearly needs legislation to revitalize the entire fleet of the United States.

Secondly, this bill would clearly disadvantage American President Lines. Sea-Land already owns the largest number of foreign-built ships eligible for ODS, twelve. This bill would give Sea-Land twelve more, for a total of 24. In our view, this is hardly a balanced result.

Thirdly, passage of this legislation would undermine the legislative efforts to revitalize the entire American flag liner industry. Indeed, at the specific urging of Senators Inouye, Stevens, and others, American President Lines and other carriers have worked with Sea-Land during recent years to develop such legislation.

I would refer you to the chart on my right and your left that indicates the history of these legislative efforts, where APL and Sea-Land have worked together with other carriers to develop legislation to solve the ills of this industry.

Based on our past experience, however, we believe that enactment of this bill would make future industry-wide efforts unlikely.

This bill is even more inappropriate, given Sea-Land's new plans to effectively acquire Farrell and Waterman, and now we understand that Lykes is in the act as well. Through those arrangements, Sea-Land seeks the benefit of subsidy, clearly without the restrictions which normally accompany subsidy.

Mr. Chairman, we were surprised that Sea-Land is asking the Congress for special legislation at the same time it is apparently preparing to ask MarAd to make extraordinary administrative determinations which would give it the benefit of subsidy without normal restrictions.

At a minimum, Congress should determine the full extent of the special requests Sea-Land will be making on the government before considering legislation to help only that company.

Accordingly, APL cannot support S. 2510 unless it is amended to help all U.S. flag liner operators. Let me just take a few more minutes to elaborate on these points.

First, Mr. Chairman, I would like to present our second chart, U.S. flag share of the U.S. liner commerce. Although volume of U.S. liner trade has increased in recent years, U.S. flag carriers have decreased, not just in percentage but in tons carried.

Clearly, to halt and reverse this decline this legislation must help all U.S. liners, liner carriers, compete more effectively with foreign lines, not just help one company and disadvantage the rest of the American companies.

As you can see from the chart, the American liner carriers carried roughly 40 percent of the United States foreign liner trade in 1957. We are down to 15 percent in 1987. In the space of 30 years, we have deteriorated from a major force in international trade to a bit player.

I would also refer you to the commission on merchant marine and defense, whose study recently came out. That had a very telling exhibit that indicated the deterioration of the American flag. As soon as I can find it, I will quote the number.

Four hundred and thirty four American liner ships in 1970 to 72 today.

Senator BREAUX. Mr. Rhein, let us stipulate the condition is lousy. We all know that. We have sat around tables. We all know the condition of everybody is going down the tube.

Let us talk about this proposal if we can.

Mr. RHEIN. Okay. In my prepared statement, Mr. Chairman, we explain that the cost of a U.S.-built vessel today is roughly three times the market price. U.S. carriers cannot possibly compete unless they can receive ODS on competitively priced vessels needed to replace aging vessels.

So to help the U.S. fleet compete with foreign operators, this bill must be amended to allow all U.S. carriers to acquire foreign-built vessels which will be ODS eligible.

Secondly, this bill in its present form would disadvantage APL and uniquely advantage Sea-Land. On my second chart, you can see only 14 of APL's 23 ships were built in the 1980's and only eleven were built overseas. By contrast, Sea-Land's announced plans involve a subsidized fleet of 24 modern, low-cost, foreign-built vessels.

Those 24 ships include the twelve D9's which would be made ODS-eligible by this bill, ships which Sea-Land built overseas with full expectation they would not be ODS-eligible.

This chart also shows the age disparity between the two fleets. We have nine vessels between 14 and 19 years of age, and of our modern vessels we do not own four of them, but only have them on charter.

With enactment of this bill, Sea-Land's proposed subsidized fleet would consist of 24 low-cost vessels built in the 1980's overseas. And Mr. Chairman, that playing field has to be considered in light of Sea-Land's new plans to use Waterman and Farrell to obtain the benefits of subsidy without the restrictions.

Consider, for example, what that means. APL's recent section 804 application for foreign flag feeder authority was before MarAd for at least six months before it was granted. That application was opposed by Sea-Land. Their section 805(a) Hawaii service application has been before MarAd for one and one-half years so far and is opposed vigorously by Sea-Land.

Sea-Land, however, intends to argue to MarAd that it should receive the benefit of the subsidy and continue foreign flag operations without 804 review and continue to serve Hawaii, Alaska, and Puerto Rico and, through a corporate affiliate, the inland waterways, without that 805(a) review.

Further, Mr. Chairman, combining the twelve Econships with U.S.-built ships it owns, Sea-Land already has 23 vessels eligible for ODS, as many as APL. It does not need special legislation to make a substantial subsidy application.

What it wants is even more eligible ships so that under its new plan it alone can have the benefit of subsidy on a huge number of modern, low-cost, foreign-built ships, without the normal restrictions accompanying subsidy.

So as shown in my final chart, S. 2510 combined with this new scheme would not level the playing field, but practically tilt it over. As you can see, APL is restricted to the number of ships that it has today. We can build no more foreign ships.

We must apply for authority to operate foreign flag feeders. We must apply for authority to operate in domestic trades, while Sea-Land under this scheme would have 24 modern subsidized vessels, they would not be subject to restrictions as a subsidized carrier in either trade routes, foreign flag feeders, or domestic limitations, acting all in concert with Waterman, Farrell, and Lykes on this A&P scheme.

Before closing, let me also explain why we believe enactment of this legislation would wreck prospects for ODS reform necessary to help all of the operators in this industry. Our belief is based on Sea-Land's own action over the years.

When in the early 1980's Sea-Land had a competitive advantage over ODS carriers by their own admission, ODS carriers who could not build abroad nor economically do so within the U.S., it strongly opposed legislation to authorize ODS carriers to acquire a limited number of foreign-built ODS-eligible vessels.

Sea-Land has also continued to oppose our proposals at the Maritime Administration with great consistency. I had hoped that our cooperative efforts during recent years in support of balanced legislation, particularly Sea-Land had put an end to the purpose of one-company legislation. But this bill has proved otherwise.

So our company cannot prudently assume that after enactment of this bill Sea-Land would ever consider joining other carriers in legislative efforts.

In conclusion, Mr. Chairman, we strongly oppose this bill, a single company special interest legislation that would be unfair to APL, extraordinarily generous to Sea-Land, and not help the U.S. merchant marine as a whole. This would add no new ships to the U.S. fleet inventory. There would be no ships built nor modified under this proposal.

However, we will support S. 2510 if it is amended to permit all U.S. flag liner companies to modernize their fleets by making vessels built anywhere in the world eligible for operation under ODS.

That concludes my statement. We thank you again for the opportunity to appear today.

[The statement follows:]

STATEMENT OF TIMOTHY J. RHEIN, PRESIDENT, AMERICAN PRESIDENT LINES

Mr. Chairman, Members of the Committee, I am Timothy J. Rhein, President of American President Lines (APL).

APL moves containerized cargo across the Pacific and Indian Oceans with its fleet of 23 U.S.-flag vessels. We operate three scheduled "linehaul" services per week between key Asian "hub" ports (e.g., Japan, Taiwan, Hong Kong) and three U.S. West Coast ports (Seattle, Oakland and Los Angeles). We move cargo between Asian "hubs" and smaller Pacific and Indian Ocean ports using a combination of U.S.-flag vessels, foreign-flag common carriers and foreign-flag "feeder" vessels. APL is a party to a contract with the Maritime Administration under the Operating Differential Subsidy (ODS) program and, as a result, must conduct its vessel operations in accordance with the terms of that contract. Therefore, we have a vital interest in proposals which relate to the ODS program.

SUMMARY

The legislation before you today, S. 2510, addresses a critical problem facing all operators of U.S.-flag liner vessels as they try to meet and beat foreign-flag competition: their current inability to modernize their fleets by operating foreign-built vessels under U.S. flag and receive ODS to cover the higher costs of employing U.S. crews aboard those vessels.

Unfortunately, S. 2510 solves the problem for only one carrier—Sea-Land—by making its existing 12 D-9 foreign-built vessels eligible for ODS.

This single-company legislation would facilitate payment of tens of millions of dollars of additional subsidy, without resulting in the addition of a single vessel to the U.S.-flag fleet or the modernization of a single existing U.S.-flag vessel.

Moreover, the bill would give Sea-Land an unfair competitive advantage. Sea-Land currently owns 12 foreign-built Econships which are already eligible for ODS (in addition to 11 U.S.-built vessels eligible for ODS). If S. 2510 is enacted, Sea-Land would have more modern foreign-built ODS-eligible vessels (24) than all the other U.S.-flag liner carriers combined!

In addition, and importantly, passage of S. 2510 in its current form would undermine attempts to reform the ODS system and revitalize the entire U.S.-flag liner industry.

Indeed, it was at the specific urging of Senators Inouye, Stevens and others that APL and other ODS carriers worked with Sea-Land during the last few years to develop balanced, industry- wide legislation to enable: (1) APL and other ODS carriers to modernize their fleets through the ability to build or acquire ships abroad; and (2) Sea-Land and other currently unsubsidized U.S.-flag liner carriers to receive ODS.

And, Mr. Chairman, we feel that this single-company legislation is even more inappropriate in light of Sea-Land's recently revealed plan to effectively acquire Farrell and Waterman and cause their operations to be modified to, in effect, subsidize Sea-Land. Further, we understand that, through these arrangements, Sea-Land intends to receive the benefit of subsidy without subjecting itself to restrictions which normally accompany subsidy—particularly the obligation to subject foreign-flag and domestic operations to scrutiny under sections 804 and 805(a) of the Merchant Marine Act. These new Sea-Land plans place this legislation in an entirely different context.

Mr. Chairman, we were surprised that Sea-Land is asking the Congress for one-company legislation at the same time it is apparently preparing to ask MarAd to make extraordinary administrative determinations. While, as we explained, we oppose S. 2510 on other grounds, at a minimum, the Committee should delay action on S. 2510 in its current form until it is able to fully assess the implications of this major new development. The Committee should determine the full extent of the requests Sea-Land will be making of the government before further considering this legislation in its current form.

For these reasons, we can support the legislation only if it is amended to address the vessel acquisition problems of APL and other U.S.-flag operators, by making any U.S.-flag liner vessel, regardless of where built, eligible for ODS (and immediate carriage of preference cargoes). We also would accept readily an amendment, along the lines of one proposed by Senator Inouye, to forgo ODS on the carriage of preference cargoes on foreign built vessels made ODS-eligible by new legislation. Indeed, I would note that APL has already agreed to do precisely that with respect to its new C-10 vessels.

DISCUSSION

This morning I would like to do three things:

First, explain why it is essential that U.S.-flag liner carriers be able to operate modern foreign-built vessels with ODS in order to be able to compete successfully with the foreign-flag operators.

Second: tell you why passage of S. 2510 would be grossly unfair and would competitively disadvantage APL.

Third, point out that S. 2510 would undermine attempts to reform the ODS system and revitalize the U.S.-flag liner fleet. All U.S.-Flag Liner Operators Should be Able to Modernize Their Fleets With Foreign-Built Vessels

Historically, operators of U.S.-flag vessels had a choice of: (1) building vessels in the United States with construction differential subsidy (CDS), receiving ODS, and being subject to operational restrictions (e.g., operating only on approved trade routes and operating foreign-flag feeders and domestic routes only with MarAd's approval); or (2) building vessels in foreign yards at roughly one-third the cost of U.S. construction, forgoing ODS, but enjoying operational and regulatory freedom.

APL chose the first option; Sea-Land chose the second. Each had advantages and disadvantages vis-a-vis U.S.-flag competitors. But in truth, neither alternative enabled U.S.-flag liner carriers fully to meet foreign-flag competition. As a result, today the share of U.S. liner foreign commerce carried on foreign bottoms is greater than ever—

over 85 percent—and few U.S.-flag liner carriers remain to compete in the foreign trades.

For APL and other subsidized carriers, receipt of ODS put us, in broad terms, in approximate wage parity with foreign-flag operators. But we still suffered and continue to suffer serious capital cost and regulatory disadvantages versus foreign-flag operators—and Sea-Land. Even when CDS was available, it did not fully compensate for the difference between U.S. and foreign construction because it was capped at 50 percent of the total vessel cost. It costs roughly three times more to buy (and two to three times as long to build) a new containership from a U.S. shipyard than from a yard in the Far East or Europe.

Consider: at roughly the same time that Sea-Land was building its D-9 vessels overseas, APL was constructing three C-9 vessels at the Avondale shipyard in Louisiana at a much higher cost, even after CDS. Specifically, the net capital cost after CDS to APL of building each C-9 vessel was $66.9 million—50 percent greater than the cost of a comparable foreign-built ship. This was a handicap of $23 million per ship, or a total of roughly $70 million. That is a huge handicap for us to overcome in our competition with foreign lines—and legislation is needed to ensure that it is never incurred again.

APL also could not then and cannot now own and control without limitation foreign-flag feeder ships. Neither could APL then, nor can it now, go where the cargo is at a moment,s notice—we could only operate on our designated trade routes and only with approved sailing frequencies.

In the meantime, Sea-Land was and is able to modernize its fleet with low-cost foreign-built vessels—and operate them without significant government regulation.

When the U.S. Government abandoned the CDS program in 1981, it appeared that Sea-Land had made a wise competitive choice vis-a-vis APL and other ODS carriers. Sea-Land could continue to modernize its fleet with foreign-built vessels. But subsidized operators were in a bind—they could not build ships abroad and receive ODS, and could not even think of building vessels in the United States due to the high costs involved.

Congress recognized the severity of the situation and in 1981 and 1983 levelled the playing field to some extent by authorizing a limited number of ships to be built in foreign yards that would be eligible to receive ODS. APL has been able, with much time, effort and expense, to partially modernize our fleet with vessels built or acquired pursuant to those authorizations.

Yet those limited grants of authority have not permitted APL or other U.S.-flag operators receiving ODS fully to renew their fleets or to make plans for future growth and enhancements. It makes little sense to provide ODS to make up for higher wage costs while requiring the operators of U.S.-flag vessels to incur insurmountable capital cost disadvantages. Since there appears to be little likelihood that an effective CDS program will be restored, during the last few years we have urged Congress to enact legislation making existing and future U.S.-flag liner vessels, regardless of where built, eligible for ODS.

It was during this time that Sea-Land began rethinking its position with regard to ODS, in part as a result of Congress permitting ODS carriers to modernize part of their fleets with foreign-built vessels. Moreover, competition from foreign-flag carriers using comparatively low-wage crews intensified, particularly from carriers based in some of the newly industrialized countries in Asia. Sea-Land decided, therefore, to give up its opposition to subsidy and to work to make its foreign-built vessels eligible for ODS.

APL, Sea-Land and all other U.S.-flag liner operators have the same fundamental need: we have to be able to operate modern, competitively priced ships, wherever built, with ODS. Otherwise, in the long run, we cannot hope to compete against foreign-flag carriers. Thus, APL supports legislation to make all existing and future U.S.-flag liner vessels, regardless of where built, acquired or chartered, eligible to receive ODS.

But we cannot support S. 2510, which would make foreign-built vessels of only one carrier eligible for ODS. Adoption of S. 2510 would directly and severely disadvantage APL. Moreover, we do not see any reason for such one-company legislation since Sea-Land has agreed with APL and others on broader, balanced legislation.

S. 2510 WOULD BE GROSSLY UNFAIR AND SEVERELY DISADVANTAGE APL

The supporters of this legislation argue that it simply makes Sea-Land's foreign-built vessels eligible for ODS. Let's not kid ourselves: everyone expects that if this legislation is adopted Sea-Land will apply for and ultimately receive subsidy. The bill's sponsors have said they hope MarAd will award subsidy; Sea-Land has said so.

So I think we should properly discuss this bill in terms of Sea-Land receiving subsidy—millions of dollars of subsidy—even though this bill will not result in the addition of one new vessel to U.S. registry or the modernization of one existing vessel under U.S. flag!

Mr. Chairman, Sea-Land also argues that S. 2510 will not disadvantage any other U.S.-flag liner operator. In case there remains any doubt, I vigorously disagree.

The argument is made that this bill will simply "level the playing field." Reduced to its simplest terms, the argument is that APL operates foreign-built vessels and receives ODS, while Sea-Land operates foreign-built vessels but does not receive ODS. Therefore, in order to even out the competition between us, Sea-Land should be able to operate its foreign-built vessels with ODS.

The truth is that if this legislation were passed, Sea-Land would have more foreign-built vessels eligible for subsidy (24) than APL and all other U.S.-flag liner companies combined. In addition, Sea-Land's subsidized fleet would be significantly more modern than APL's fleet.

That is because until now Sea-Land has been free to build or acquire abroad whatever vessels it wanted—and to operate them free of trade route restrictions, limitations on foreign-flag feeders and domestic service to Alaska, Hawaii, and Puerto Rico, and other regulatory restraints. Sea-Land made its choice not to be subsidized; now it believes it made the wrong choice and seeks to be subsidized—but, on the basis of its latest announcement, without the restrictions we must live with. And Sea-Land not only seeks to avoid the usual restrictions which accompany subsidy—it seeks this special legislation, which in effect would reward Sea-Land for having built the D-9s abroad at roughly the same time that APL was building C-9s in the U.S. at a far higher cost (even after subtracting CDS).

Let's compare the two carriers, fleets. The chart attached to my statement facilitates such a comparison.

Let's start with the 23 vessels in or soon to enter APL's fleet. As you can see, only 14 of those vessels have been built in the 1980's—and only 11 of those were built in foreign yards. Specifically, of those 11 foreign-built vessels for which APL is currently receiving ODS: (1) APL was directly granted the right to build or acquire only two foreign-built vessels by legislation in 1983 (section 134 of P.L. 98-?5?); (2) four of them are not owned by APL, but are only on charter from Lykes for a limited period (Lykes had acquired them pursuant to the 1981 legislation, section 1610 of P.L. 97-35); and (3) APL had to acquire from others, at considerable cost, the rights to build five vessels abroad pursuant to section 615 authority in the ?98? legislation.

Now let's look at 24 of Sea-Land's vessels. All were built in foreign yards. All Were built in the 1980s. Moreover, 12 of these—the former U.S. Lines Econships—are already eligible for ODS since they were constructed pursuant to section 615 authority in the 1981 legislation. The other 12 foreign-built vessels are the D-9 ships, which S. 2510 would make eligible for ODS.

To review once again:

APL operates 11 modern foreign-built vessels eligible for ODS; Sea-Land currently operates 12 modern foreign- built vessels eligible for ODS. S. 2510 would make eligible for ODS another 12 Sea-Land modern foreign- built vessels, for a total of 24—more than all other U.S.-flag carriers combined. That is hardly levelling the playing field.

Only 14 of APL's vessels were built in the 1980s; Sea-Land's 24 foreign-built vessels were built in the 1980s. S. 2510 would make Sea-Land,s vessels eligible for subsidy while not granting APL the right to continue modernizing its fleet with additional foreign-built vessels. That is hardly levelling the playing field.

Moreover, Mr. Chairman, I would bring to the Committee's attention the fact that Sea-Land already has 23 vessels eligible for ODS. With the 12 former U.S. Lines Econships which were built pursuant to section 615 authority and 11 vessels built in the United States, Sea-Land has today as many ODS-eligible vessels as APL.

Thus, the bill before you today is either: (1) an effort by Sea-Land to have as many as 35 vessels on subsidy (23 vessels already eligible plus the 12 D-9 ships); or (2)

simply an attempt by Sea-Land to increase the size and improve the quality of a future Sea-Land 24-vessel subsidized fleet (12 Econships plus 12 D-9s), since Sea-Land has previously stated its willingness to "cap" their ODS fleet at approximately 24 vessels.

APL can agree to Congress making Sea-Land eligible to receive ODS on its modern foreign-built fleet—but only if APL is afforded the same opportunity to modernize its fleet by being able to build or acquire foreign-built vessels and operate them with ODS.

And let me reemphasize that we see S. 2510 in its current form as even more objectionable given Sea-Land's new plan to effectively acquire Farrell and Waterman, in order to effectively subsidize Sea-Land's fleet.

As we understand it, through these arrangements Sea-Land will seek to obtain the benefit of subsidy without the restrictions that have long faced subsidized operators. In particular, in the normal course, Sea-Land's affiliation with subsidized operators would subject its own operations to review under sections 804 and 805(a) of the Merchant Marine Act. Section 804 generally prohibits a carrier from receiving subsidy if it or any affiliated entity operates foreign-flag vessels—unless MarAd determines to issue a waiver for special circumstances and good cause, and for a specific period of time. Sea-Land operates a significant number of foreign-flag vessels. Section 805(a) prohibits a carrier from receiving subsidy if it or any affiliated entity provides domestic service—unless certain tests are met and after a hearing. Sea-Land provides extensive domestic service. As you may know, APL's recent section 804 application for foreign-flag feeder authority was before MarAd for six months before it was granted. That application was opposed by Sea-Land. Similarly, our Hawaii service application under section 805 has been before MarAd for one and one-half years and is opposed by Sea-Land. We are concerned, however, that Sea-Land now intends to argue to MarAd that it deserves to be exempt from or somehow not subject to those provisions and processes. It would then be able to receive the benefits of subsidy and continue to operate foreign-flag vessels without 804 review and continue to serve Hawaii, Alaska, Puerto Rico and (through a corporate affiliate) the inland waterways without 805(a) review.

Given that plan, which would involve requests of MarAd for unprecedented administrative relief, it is even more inappropriate than before for the Congress to advance legislation that would help only Sea-Land. It is the unmet needs of the entire U.S. merchant marine that warrant corrective action by the Congress.

IT IS UNNECESSARY TO ADOPT SPECIAL LEGISLATION LIKE S. 2510 BECAUSE SEA-LAND, APL AND OTHER CARRIERS HAVE REPEATEDLY AGREED ON BALANCED LEGISLATION TO PERMIT ALL U.S.-FLAG LINER COMPANIES TO RECEIVE ODS FOR FOREIGN-BUILT VESSELS

Mr. Chairman, I again must vigorously disagree with those who claim that this bill is neither a substitute for nor a detraction from the need for ODS reform legislation. Let's be clear: if this bill is adopted as introduced, I firmly believe there will be no further ODS reform legislation. Let's be candid: once Sea-Land is given a competitive advantage, they will strongly oppose further efforts to assist other U.S.-flag liner carriers.

My statement is based on the simple reality of Sea-Land's actions over several years. When they realized they had a competitive advantage, insofar as ODS carriers could not build abroad nor economically do so in the U.S., they strongly opposed Congressional efforts to authorize ODS carriers to build or acquire even a limited number of foreign-built vessels. (Today, even as Sea-Land positions itself to apply for subsidy, it consistently seeks to straitjacket APL by opposing our recent applications at MarAd concerning Hawaii, additional Pacific Coast sailings, and foreign-flag feeders.) I have little doubt that if you give them a competitive advantage by passing S. 2510, they will oppose efforts to help other carriers yet again.

The result: millions of dollars of subsidy would be handed to Sea-Land without one new ship being built or even one existing vessel being modernized. Moreover, failure to reform the ODS program will threaten the continued existence—at least under U.S.-flag—of the current ODS carriers.

I wish it were otherwise. I had hoped that our cooperative efforts during the last few years in support of balanced legislation providing build-foreign authority for all U.S.-flag liner carriers had put an end to the pursuit of special legislation in which only one carrier benefits.

You will recall, Mr. Chairman, that you introduced S. ??83 on May 12, 1987. Title II of your bill deemed foreign-built vessels to have been built in the United States, and would have made those vessels immediately eligible to carry preference cargoes. A revised Title II developed jointly by APL, Sea-Land and Lykes was formally introduced in the House by request by Chairman Jones and others (H.R. 3808, December 18, 1987). APL, Sea-Land and Lykes all supported the build-foreign provisions of Title II and H.R. 3808.

So did the Administration. Indeed, Members may recall that two years earlier, on July 23, 1985, Senator Stevens introduced by request legislation sought by the Administration that would have deemed foreign-built vessels to have been built in the United States for purposes of ODS (S. 1481? and would have made the newer of those vessels immediately eligible to carry preference cargoes (S. 1482). The Administration's ODS reform proposal of October, 1987 includes similar provisions.

To sum up: APL has worked patiently and persistently with other U.S.-flag carriers on legislation which could enable all of us to better meet—and beat—foreign-flag competition. Accordingly, we see no reason why this Committee should not amend S. 2510 to treat foreign-built vessels as if they were built in the United States for purposes of ODS and cargo preference carriage. By doing so you would revitalize the entire liner industry generally, rather than simply benefit one carrier at the expense of other carriers, the Treasury and our U.S.-flag auxiliary sealift capability.

CONCLUSION

Thank you, Mr. Chairman, for allowing us to testify this morning. For the reasons I have discussed, we strongly oppose S. 2510 in its current form as single-company legislation. Moreover, Sea-Land's plan to effectively acquire Farrell and Waterman makes legislation such as S. 2510 even more inappropriate. However, we will support enactment of S. 2510 if it is amended to permit all U.S.-flag liner companies to modernize their fleets by making vessels built anywhere in the world eligible for operation under ODS.

That concludes my prepared statement. APL thanks you again for the opportunity to appear before the Subcommittee today.

APL & SEA-LAND FLEET COMPARISON

SEA-LAND (Proposed ODS Fleet)	Original Build	AMERICAN PRESIDENT LINES (Entire Fleet)	Original Build	
1. Sea-Land Defender	1980	1. President Cleveland	1969	U.S. Built
2. Sea-Land Developer	1980	2. President Harrison	1971	U.S. Built
3. Sea-Land Endurance	1980	3. President Grant	1971	U.S. Built
4. Sea-Land Explorer	1980	4. President Hoover	1971	U.S. Built
5. Sea-Land Express	1980	5. President Tyler	1972	U.S. Built
6. Sea-Land Freedom	1980	6. President Jefferson	1973	U.S. Built
7. Sea-Land Independence	1980	7. President Pierce	1973	U.S. Built
8. Sea-Land Innovator	1980	8. President Madison	1973	U.S. Built
9. Sea-Land Liberator	1980	9. President Johnson	1974	U.S. Built
10. Sea-Land Mariner	1980			
11. Sea-Land Patriot	1980	10. President F. D. Roosevelt	1980	
12. Sea-Land Voyager	1980	11. President Eisenhower	1980	
*13. Sea-Land Integrity	1984	12. President Washington	1982	U.S. Built
*14. Sea-Land Value	1984	13. President Lincoln	1982	U.S. Built
*15. Raleigh Bay	1984	14. President Monroe	1983	U.S. Built
*16. Nedlloyd Holland	1984	15. President Arthur	1987	
*17. Sea-Land Achiever	1984	16. President Buchanan	1987	
*18. Sea-Land Atlantic	1985	17. President Garfield	1987	
*19. Sea-Land Commitment	1985	18. President Harding	1987	
*20. Sea-Land Performance	1985	19. President Adams	1988	
*21. Sea-Land Quality	1985	20. President Jackson	1988	
*22. Galveston Bay	1985	21. President Kennedy	1988	
*23. Newark Bay	1985	22. President Polk	1988	
*24. Nedlloyd Hudson	1985	23. President Truman	1988	

* These vessels are foreign-built and currently eligible for subsidy

Senator BREAUX. Mr. Johnsen.

STATEMENT OF ERIK JOHNSEN, PRESIDENT, CENTRAL GULF LINES, INC.

Mr. JOHNSEN. Thank you, Senator.

My name is Erik Johnson and I am President of Central Gulf Lines. I have submitted a prepared statement for the record and I will endeavor to summarize that statement now. I appear before this committee today respectfully to express strong opposition to S. 2510 in its present form. I urge that it be amended to provide equal treatment and emergency protection for the surviving small U.S. flag unsubsidized operators whose ability to continue to operate and effectively compete is seriously threatened by this CSX-Sea-Land plan.

Our company is a relatively small U.S. flag operator that has served the Middle East, Indian Ocean, and Southeast Asia with modern U.S. flag ships built in U.S. yards. Those three ships are currently under temporary charter to the Military Sealift Command.

Like Sea-Land, we also operate two liners that have been built abroad and are currently U.S. flag and temporarily chartered to the Military Sealift Command, and two pure car carriers, which also were built abroad and are U.S. flagged, U.S. crewed, carrying Japanese-made automobiles to the United States.

Central Gulf has had to compete simultaneously with both foreign flag operators favored by low operating costs and U.S. flag subsidized operators operating with revenues supplemented by the U.S. government with ODS payments. Until recently, Sea-Land, Central Gulf, and Crowley, the three surviving U.S. flag unsubsidized liner operators, were united in their support of legislation that would alleviate these tilted competitive conditions and create a level playing field.

Under the level playing field concept, all U.S. flag operators would participate in the reformed Federal ODS program on a fair, non-discriminatory basis.

The chances for enactment of such a program were recently substantially enhanced when the Secretary of Transportation announced that the Administration now supports the approval of legislation that would create a level playing field for all operators.

Before Congress could effectively resolve the dilemma confronting the seven surviving liner operators, CSX entered the picture and acquired the largest unsubsidized U.S. flag survivor, Sea-Land. CSX is a dominant transportation corporation.

It has acquired three of the largest competing railroads in the United States—the Chessie System, the Seaboard, and L&N. It has also recently acquired American Commercial Barge Line, one of the largest domestic water carriers. And now with Sea-Land and a new affiliate, the Great Atlantic & Pacific Shipping Company, it proposes to acquire two more of the seven surviving U.S. liner companies, Waterman and Farrell, to use the dormant subsidy contracts that those two companies have.

According to information made available to me last week, the CSX acquisition also contemplates making a contractual arrangement with Lykes Brothers through the swapping of important subsidy contracts with Waterman and Waterman's trade routes 17 and 18 contracts and 3 LASH vessels.

By these maneuvers, there would be an elimination of a need for a new application. It seems apparent that the fundamental purpose of these extraordinary acquisitions and territorial acquisitions by CSX is to gain full participation for Sea-Land in the old existing program without the need for ODS reform.

Under the CSX plan, Sea-Land would quickly gain via administrative approval at least approximately $60 million a year in ODS payments from the Treasury to operate 24 ships in the Atlantic and Pacific trades.

Ordinarily, Central Gulf's philosophy is to live and let live and not oppose legislation simply because it benefits a competitor. But here we have no alternative but to oppose 2510 as written.

The bill enables Sea-Land to qualify an additional 12 ships, foreign-built, for subsidy and leaves us with no eligibility whatsoever.

S. 2510, if enacted in its present form, would immediately place Sea-Land in a position, as I mentioned before, of receiving $60 million a year in ODS subsidy.

As recently as 1970, the liner segment of the U.S. Merchant Marine consisted of 18 companies and 434 ships. Today there are only 7 companies and 88 liner vessels. Consequently, Central Gulf believes that for the Committee to favorably consider S. 2510, the following amendments are truly essential.

One, an amendment which would authorize Central Gulf to designate six of its existing or to be acquired foreign-built liner vessels as United States built for purposes of Title VI and the Cargo Preference sections of the Merchant Marine Act of 1936, as amended.

And, two, an amendment that would establish a small liner operator emergency operating differential subsidy fund, out of which ODS payments could immediately be made to the two smaller surviving unsubsidized operators, Central Gulf and Crowley, at least until Congress is able to enact more extensive ODS reform legislation.

In this regard, it must be recognized that the CSX-A & P-Sea-Land acquisition, if consummated, would have the Government pay, over a three-year period, $180 million in subsidies. These payments are, in large part, to contract sailings not presently utilized by Waterman, Farrell and Lykes.

Under the proposal, the smaller liner operators' emergency fund would, in contrast, possible payment of $2.5 million per year per ship for a vastly smaller number of vessels. In view of the importance of preserving what remains of the U.S. liner fleet, and the urgent necessity for protecting the two smaller surviving unsubsidized operators, I submit this emergency proposal is both essential and good and a valid investment by the United States for the national defense.

In sum and substance, I urge the Committee either to reject S. 2510 or to adopt the critically important amendments I propose.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF ERIK F. JOHNSEN, PRESIDENT CENTRAL GULF LINES, INC.

Mr. Chairman: I appear before this Committee today respectfully to express strong opposition to S. 2510 in its present form. For this legislation to be seriously considered this year, I urge that it be amended to provide equal treatment and emergency protection for the surviving small U.S. flag unsubsidized operators whose ability to continue to operate and effectively compete is seriously threatened by the anticompetitive CSX-Sea Land plan the bill is designed to aid and abet.

Our company, Central Gulf Lines, is a relatively small U.S. flag operator. Historically, its U.S. flag liner vessels have served the Middle East, the Indian Ocean and Southeast Asia. Like Sea Land, we operate modern U.S. flag vessels that were built in a United States shipyard. Those three vessels are currently temporarily chartered to the Military Sealift Command. Also like Sea Land, Central Gulf operates other U.S. flag vessels that were constructed in foreign shipyards. Two of those liner vessels are likewise temporarily chartered to the Military Sealift Command, while the others two Pure Car Carriers transport Japanese-made automobiles between Japan and the United States. This is a pioneer operation in that our two vessels are among the first to carry Japanese vehicles in U.S. flag ships manned by U.S. crews.

Also like Sea Land, Central Gulf is an unsubsidized U.S. flag operator. Over the years, therefore, Central Gulf has had to compete simultaneously with both foreign-flag operators favored by lower operating costs and U.S. flag subsidized operators whose operating revenues are supplemented each year by millions of dollars of Operating Differential Subsidy (ODS) payments from the United States Treasury. Over the years, for example, two of the largest surviving subsidized U.S. flag operators each have received roughly $1.5 billion in ODS payments from the Treasury.

Consequently, until recently, Sea Land, Central Gulf and Crowley Maritime the three surviving U.S. flag unsubsidized liner operators were united in their support of legislation that would alleviate these tilted competitive conditions by creating a "level ODS playing field" for all seven surviving U.S. flag operators.

Under the "level ODS playing field" concept, all U.S. flag operators would participate in a reformed federal ODS program on a fair, nondiscriminatory basis. In addition, ODS trade route restrictions and archaic administrative procedures would be eliminated, while the aging U.S. merchant fleet would be modernized through construction of at least a limited number of vessels in overseas shipyards. The chances for enactment of such a program were recently substantially enhanced when the Secretary of Transportation announced that the Administration now supports early approval of legislation that would create a "level ODS playing field" for all U.S. flag operators.

However, before Congress could effectively resolve the dilemma confronting the seven surviving liner operators, CSX Transportation, Inc. entered the picture and acquired the largest unsubsidized U.S. flag survivor, Sea Land. CSX, of course, holds a dominant position in the transportation industry, largely as a result of corporate acquisitions. Several years ago, CSX acquired three of the largest competing railroads in the United States the Chessie System, Seaboard and the L&N. Then, over the strenuous objections of the nation's domestic barge operators, CSX purchased American Commercial Barge Lines, one of the largest domestic water carriers in the country. Next came Sea Land and now, through Sea Land and a new affiliate, the Great Atlantic and Pacific Shipping Company, it proposes to acquire two more of the seven surviving U.S. liner companies, Waterman and Farrell Lines.

According to information made available to me last week, this latest CSX acquisition effort also contemplates new contractual arrangements between the CSX-Sea Land-A&P combine and Lykes Bros. Steamship Company, still another of the few surviving U.S. flag liner carriers, pursuant to which the contracting parties would allocate and swap important U.S. subsidized shipping operations and contract rights among themselves. As I understand these arrangements, in exchange for Lykes' transfer of some of its

authorized subsidy operations and contract rights in the Pacific and elsewhere, the CSX combine will allow Lykes to charter Waterman's LASH vessels, to acquire Waterman's subsidy contracts on Trade Routes 17 and 18, and to succeed to Waterman's right to make privileged calls to Egypt. These arrangements, if true, are of vital concern to Central Gulf because they threaten to have a serious impact on competitive conditions in our historical operating territories.

It seems apparent, I respectfully submit, that the fundamental purpose of these recent extraordinary acquisitions and territorial allocations by the CSX combine is to gain full participation for Sea Land in the old, existing ODS program without, of course, the need for any ODS reform legislation and totally without the establishment of a "level ODS playing field" for the surviving small U.S. flag unsubsidized operators, Central Gulf and Crowley Maritime. Under the CSX plan, Sea Land would quickly gain at least approximately $60 million a year in ODS payments from the Treasury to operate 24 ships in the Atlantic and Pacific, all of which vessels were constructed in foreign shipyards. The sole purpose of S. 2510, of course, is to make 12 of those foreign-built ships immediately eligible for subsidy.

Ordinarily, Central Gulf's business philosophy is to "live and let live", and not to oppose legislation simply because it benefits a competitor. But, here Central Gulf has no alternative but to oppose S. 2510. As written, the bill enables Sea Land to qualify an additional 12 of its foreign-built ships for subsidy, while Central Gulf, which already operates 4 such ships and urgently needs additional foreign-built vessels to modernize and enlarge its fleet, is completely ignored and left without any new eligibility whatsoever.

Moreover, if S. 2510 is enacted in its present form, Sea Land will immediately become eligible to apply for at least $60 million a year in ODS payments from the Government. Sea Land thus threatens discriminatorily to join Lykes and APL, which already receive similar ODS payments each year from the Treasury, as the favored recipients of federal assistance while their two small unsubsidized competitors Central Gulf and Crowley are left with no ODS participation at all. Indeed, under the CSX-Sea Land plan, Central Gulf, without any ODS rights of any kind, would be forced to compete on its historical trade routes with Lykes, a far larger subsidized operator, which, through the aforesaid arrangements with CSX, Sea Land and A&P, will be allowed to substitute for the disappearing Waterman.

As the Committee knows, as recently as 1970, the liner segment of the U.S. merchant marine consisted of 18 major companies operating 434 ships. Today, there are only seven companies and 88 liner vessels. If the CSX-Sea Land plan is consummated, the number of survivors will be reduced to just five. Certainly, the United States cannot afford foolishly to threaten the survival of two more Central Gulf and Crowley by failing fairly and adequately to protect them if S. 2510 is to be enacted and the CSX-Sea Land plan is consummated.

Accordingly, for the Committee to consider S. 2510 favorably, Central Gulf submits that the following amendments are truly essential:

1. An amendment which would authorize Central Gulf to designate six of its existing or to be acquired foreign-built liner vessels as "United States-built" for purposes of title VI (except Section 607) and the cargo preference sections of the Merchant Marine Act of 1936, as amended.

2. An amendment that would establish a "Small Liner Operators' Emergency ODS Fund" out of which ODS payments could immediately be made to the two small surviving unsubsidized operators Central Gulf and Crowley at least until Congress is able to enact more extensive ODS reform legislation.

In this regard, it must be recognized that if the CSX-Sea Land acquisitions are consummated and ODS is sought for 24 ships under the ODS contract rights they obtained through (a) the Waterman-Farrell acquisitions, (b) the U.S. Lines bankruptcy and (c) the aforementioned allocation arrangements with Lykes, the ODS cost to the Government will be at least $60 million per year or $180 million over the initial 3-year period. Those payments, attributable in large part to contract sailings not presently utilized by Waterman, Farrell, Lykes or U.S. Lines, will clearly require additional ODS funding for MarAd, which I understand will have to be appropriated by Congress. If those additional appropriations are made for CSX and Sea Land, clearly a far smaller amount must be provided to protect their surviving small competitors.

Under the "Small Liner Operators' Emergency ODS Fund" amendment I propose, an operator would be allowed to add a total of six ships in three years to the ODS program at a rate of three ships the first year, one the second year and two the third year, at a maximum ODS cost to MarAd of $2.5 million per ship per year. This means, therefore, that additional ODS funding for Central Gulf for that period would be $7.5 million the first year, $10 million the second year, and $15 million the third year or a 3-year total of $30 million. The amendment I suggest would, of course, also provide for immediate small operator ODS eligibility that is, without any Section 605(c) hearing requirement and other appropriate technical provisions to insure that such eligibility could be finally established at or before the time the CSX-Sea Land plan becomes fully effective and subsidized.

Considering the vital importance of preserving what little remains of the U.S. liner fleet and the urgent necessity of protecting the two small surviving unsubsidized operators against a new onslaught of unfair competition I submit this emergency program is both essential and a good, valid investment for the United States and its national defense.

In sum and substance, therefore, I urge the Committee either to reject S. 2510, or to adopt the critically important amendments I have proposed.

Thank you, Mr. Chairman. I shall be pleased to answer questions and to cooperate with you and the Committee staff in the formulation of the two amendments we consider so plainly indespensable.

Senator BREAUX. Thank you, Mr. Johnsen. Next, we will call on Mr. Leo Collar.

STATEMENT OF LEO L. COLLAR, PRESIDENT, CROWLEY MARITIME CORP.

Mr. COLLAR. Thank you, Mr. Chairman. I am Leo Collar, President and Chief Operating Officer of Crowley Maritime Corporation. I have submitted a prepared statement, and I will just make a few comments, if that is satisfactory.

We are opposed to 2510 on the basis of principle, on the basis that it is special interest, but more that it is doing just a little bit of what needs to be done.

We were asked to join United Shipowners Association two years ago because there is a need for ODS reform. We are an unsubsidized company, and for many years have been uninterested in subsidy operations. However, as we have expanded and gone into international operations, we are more interested now than we have been in the past.

And therefore, we joined the USA group so we could join together with the other companies to try to come to a consensus. The problem that we have with this legislation is that it is piecemeal.

But with the announcement, on July 6, of the A&P acquisition of Waterman and Farrell, it really seems to us that until that scheme is a little bit more understood by all of us, that this legislation of 2510 should really be held up.

I am personally disappointed by the new proposal that Sea-Land has made, not because it is extremely innovative and creative, because I think it really is. I think they have done a good job of putting something together like that. But it seems to me that the necessity for consensus of the industry to reform ODS goes by the board when this new scheme is enacted, because Sea-Land will no longer be acting in new moves toward ODS reform, because they will have what they need.

That does not do anything for anybody else, does not do anything for us.

Therefore we are opposed to 2510 in its present form. Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF LEO L. COLLAR, PRESIDENT AND CHIEF OPERATING OFFICER, CROWLEY MARITIME CORP.

My name is Leo L. Collar and I am president and chief operating officer of Crowley Maritime Corp. Crowley is a diverse maritime enterprise comprised of over forty corporate entities. We operate both U.S.-flag and foreign flag vessels and play a significant role in the flow of cargo to and from the contiguous 48 States. We provide service to Alaska, Hawaii and Puerto Rico, as well as Europe, the Far East, South and Central America and the Caribbean. Our operations are unique, far flung and, at the present, totally unsubsidized. In fact, it is the regulatory restrictions that are imposed on such complex operations that preclude crowley from participating in the subsidy program.

My comments will be very brief and to the point. The bill under consideration today, S. 2510, accomplishes but one objective—it makes twelve foreign-built vessels presently operated by Sea-Land Service, Inc., eligible for operating differential subsidy. It serves no other purpose whatsoever. It completely ignores the host of ongoing problems confronting the U.S. merchant marine and disregards this industry's collective efforts over the past five years to bring about meaningful reform.

Admittedly, Sea-Land has been at the forefront of these efforts and we believe S. 2510 was introduced out of the sense of total frustration—a feeling shared by all who have been involved in this exercise. But now is not the time for impatience and short-cut solutions. Sea-Land's rifle shot approach to an industry-wide problem in need of heavy artillery, is not only self-serving, but counterproductive. Such piecemeal legislation will merely circumvent and prolong the overall problem, not solve it.

Perhaps if Sea-Land's problem was an isolated one, resulting from some unintended statutory aberration, this approach would be more understandable. However, when considered in the light of all the time and energy expended—the numerous broad-scope subsidy reform bills that have been introduced, the repeated congressional hearings that have been held and the ongoing negotiations that are being conducted—this self-centered attempt to solve an individual problem is very difficult to accept. The industry, as a whole, is crying-out for significant reform. The merchant Marine Act of 1936 and the rules and regulations promulgated thereunder no longer work. An operating-differential subsidy program that benefits only certain U.S.-flag carriers, without the possibility for other U.S.-flag carriers to participate—due to inadequate funding and antiquated restrictions, is simply unfair. To knowingly perpetuate these inequities, which evolved unintentionally over time, seems absurd.

Crowley is hardly alone in its belief that the existing ODS program—now over 52 years old—is in need of a major overhaul. Basic refom concepts such as trade route deregulation and eligibility for foreign built vessels to be included in the program make sense to Crowley—but only as part of a legislative package which would make the program available to all qualified applicants. Most importantly, however, before Crowley could support any subsidy reform proposal, it would have to provide for the equitable sharing of available ODS funds among all eligible carriers and give due consideration to those U.S.-flag carriers with existing domestic and foreign flag operations.

In the hope of finding an acceptable solution, Crowley has been actively engaged in discussions with the other U.S.-flag carriers. Unfortunately, a uniform position has not been reached to date. Nevertheless, Crowley remains committed to continue to work with the other carriers, and all segments of the industry, to create a meaningful and fair reform program.

Crowley appreciates this opportunity to present our views and I would be pleased to respond to any questions.

Thank you.

Senator BREAUX. Thank you, Mr. Collar. Next, Captain Leback?

STATEMENT OF WARREN G. LEBACK, SENIOR VICE PRESIDENT, VESSEL OPERATIONS, PUERTO RICO MARINE MANAGEMENT, INC.; ACCOMPANIED BY RANDOLPH G. FLOOD, RANDOLPH F. FLOOD & ASSOCIATES; AND AMY LOESERMAN KLEIN, COUNSEL

Mr. LEBACK. Thank you, Mr. Chairman, members of the Committee. I am Warren G. Leback, Senior Vice President of Vessel Operations, Puerto Rico Marine Management, Inc., which is the operating agent for Puerto Rico Maritime Shipping Authority. I am accompanied by Randolph G. Flood of Randolph G. Flood and Associates, who represent us in Washington, and our attorney, Amy Loeserman Klein.

Puerto Rico Maritime Shipping Authority, or PRMSA as it is called, has certain concerns regarding S. 2510 which I will summarize this afternoon. A more extensive statement of our position has been submitted in writing for the record.

PRMSA is a non-stock public corporation, owned by the Commonwealth of Puerto Rico and it was formed in 1974 in recognition of the island's extreme dependence on ocean shipping and the need to have a sufficient and efficient shipping service between the mainland United States and Puerto Rico.

S. 2510 is a bill which applies only to the vessels of PRMSA's competitor, Sea-Land Service, Inc., and specifically, only to twelve D-9 vessels constructed for Sea-Land in Japanese and Korean yards in 1980 and 1981.

The debate regarding entitlement for operating differential subsidies for ships built foreign has been played out before the Congress for the past eight years. The parameters of that debate are well understood.

In connection with this bill, however, one point is very significant: whatever the problems that have existed during the past eight years in connection with the cutoff of funding for subsidized construction, and the consequent difficulties of subsidized operators in expanding or replacing their fleets, never before has Congress passed a bill for one operator which changes the ground rules for the ships that it already owns, built eight years in the past.

By contrast, prior legislation was equally applicable to all operators and reflected permissions to build or acquire foreign for ODS entitlement in the future. The reasons for the permission that were given in 1981 and 1983 was stated over and over again as the necessity for ship replacement by subsidized operators.

And in view of the restrictions of their existing subsidy contracts and the lack of any CDS funds which would enable them to satisfy those contracts, replace vessels and modernize their fleets in U.S. shipyards.

Not one of those rationales apply today to S. 2510, which is for the benefits of ships owned by a presently unsubsidized operator, and does not relate to ship replacement, ship modernization, or contract restrictions.

Our primary concern relates to the protections in the current law for operators of purely domestic services, namely 805(a) of the Merchant Marine Act of 1936. That section provides that any person operating in domestic service has the right to a hearing before the Secretary of Transportation which protects that domestic operator against competition from a subsidized line.

In the event this special bill is passed, there must be, and I repeat, there must be no implication of any waiver of any of the provisions of Section 805. Thus, if Sea-Land does become a subsidized operator, or an affiliate, or an associate, and/or a charterer of vessels operated by or a subsidized operator, under the present law it would have to pass Section 805 tests to continue its domestic operations.

This bill must make it absolutely clear that any special consideration given to put the D-9s in the same legal situation in which they would have been had they been built in American shipyards does not remove the fundamental protections accorded to domestic and unsubsidized operators by Section 805 of the Act.

Finally, we wish to register unease with the approach reflected in this bill, which we think undermines the struggle in which our industry and this Congress has been engaged for the past eight years—that is, finding a solution to the dilemmas faced by the United States subsidized and unsubsidized operators, United States shipyards, and all of the working people involved in these industries, so as to create a resurgent United States Merchant Marine.

Granting exceptions to build U.S. requirement for one company for 12 eight-year-old ships undermines that joint effort and threatens the promise of fair treatment and equality to which all segments of the Merchant Marine are entitled.

Indeed, it is ironic that Sea-Land, which testified at length in 1983 and again in 1986 concerning both the dangers of awarding operating subsidies to ships built abroad and the treatment of certain operators should be now the recipient of such special Congressional favor.

Later, in May of 1986, Sea-Land was purchased by CSX Corporation, a corporation with over $12.7 billion in assets and $6.3 billion in revenue for the fiscal year 1986. In the past year, Sea-Land has purchased from the United States Lines fleet twelve ECON ships and ten other Sea-Land vessels, basically doubling its carrying capacity.

Given Sea-Land's extraordinary increase in size, its ownership by a multi-billion dollar corporation with its own transportation network, we would think that Congress would want to carefully consider the ramifications of a bill specifically designed for this one steamship company.

Such consideration appears especially warranted in the light of the events of the last few days. The trade papers are filled with press reports of a three way consolidation of U.S. shipping unprecedented in scope and intricacy.

A new company, the Great Atlantic and Pacific Shipping Company, along with Farrell, Waterman, the latter of which will bareboat charter and operate 24 of Sea-Land's ships, including the aforementioned

ECON ships and the specified D-9s, Sea-Land would then time-charter these vessels back for its own operation.

The full contours of the deal are still unknown. And what is clear is it will profoundly and permanently alter the character of the United States maritime industry. Before special legislation such as S. 2510 is enacted, upsetting the status under the present law, the details of this merge and lease-back proposal must be fully aired and its legal and economic implications critically analyzed.

We appreciate the opportunity to register with this Committee our very deep concerns regarding the federal philosophy of the specific issues, treating one company as presented by S. 2510. Thank you.

[The statement follows:]

STATEMENT OF WARREN G. LEBACK, SENIOR VICE PRESIDENT, VESSEL OPERATIONS, PUERTO RICO MARINE MANAGEMENT, INC.

Mr. Chairman, members of the Committee, I am Warren G. Leback, Senior Vice President, Vessel Operations for Puerto Rico Marine Management, Inc., which is the operating agent for Puerto Rico Maritime Shipping Authority. I am accompanied by Randolph G. Flood, of Randolph G. Flood and Associates, who represents us in Washington, and by our attorney Amy Loeserman Klein. Puerto Rico Maritime Shipping Authority, or PRMSA as it is called, has certain concerns regarding S. 2510 which we seek to put before you today.

PRMSA is a non-stock public corporation owned by the Common-wealth of Puerto Rico and created by Act No. 62, as amended, of the Commonwealth of Puerto Rico. It was formed in 1974 by purchase of certain assets of Sea-Land Service, Inc., Seatrain Lines, Inc. and of the stock of Transamerican Trailer Transport, Inc., which were then the three major carriers serving Puerto Rico. PRMSA was formed in recognition of the island's extreme dependence on ocean shipping and of the need to have a sufficient and efficient shipping service between the mainland United States and Puerto Rico. As stated in the preamble of Act No. 62:

The maritime transportation system is therefore, a fundamental element to the well being of the people of Puerto Rico. Its efficiency, adjustment and operation in the pursuit of the general welfare must constitute the basic aspects of a public policy which the government of Puerto Rico cannot ignore.

PRMSA's original fleet consisted of eight containerships: three acquired from Seatrain Lines, Inc. and five acquired from Sea-Land Service, Inc.: and four trailerships: three acquired from Transamerican Trailer Transport, Inc. and one from Sun Shipbuilding. To upgrade this fleet prior to March of this year, PRMSA had disposed of some of the containerships acquired from Sea-train and Sea-Land and had acquired additional jumboized trailerships. In March, PRMSA purchased, at an auction directed by the Bankruptcy Court, five large containerships of the Lancer class formerly owned by United States Lines. With these vessels, PRMSA will replace almost its entire existing fleet. By expanding its services in the Caribbean, PRMSA hopes to play an important role in the development of the Caribbean Basin in accordance with this administration's policy. PRMSA's Lancer vessels, with their flexibility, speed, and dimensions, will give a significant boost to PRMSA's plans for service to this entire area.

S.2510 is a bill which applies only to PRMSA's competitor, Sea-Land Service, Inc., and specifically, only to twelve D-9 vessels constructed for Sea-Land in Japanese and Korean shipyards in 1980 and 1981. It would permit only Sea-Land to obtain operating differential subsidy for these vessels in the event Sea-Land becomes a subsidized operator. At the present time, these D-9 vessels are used in Sea-Land's Far Eastern service.

PRMSA,s interest in S. 2510 stems from a number of factors. First is the possibility that these vessels might be used in the future in Caribbean services as subsidized vessels in competition with PRMSA, whose ships are built in U.S. yards. Second is the

possibility that the legislation might erode other protections contained in the Merchant Marine Act, 1936, specifically the protections set forth in section 805(a). Third is the disturbing principle embodied in this special legislation which portends danger for all U.S.-flag operators.

The debate regarding entitlement for operating differential subsidy for ships built foreign has been played out before the Congress for the past eight years, and the parameters of that debate are well understood. In connection with this bill, however, we make one point which we believe is very significant: whatever exigencies or problems have existed during these past eight years in connection with the cut-off of funding for subsidized construction, and the consequent difficulties of subsidized operators in expanding or replacing their fleets, never before has the Congress passed a bill for one operator only which changes the ground rules for ships it already owns built 8 years previous. By contrast, prior legislation was equally applicable to all operators, and reflected permissions to build or acquire foreign for ODS entitlement in the future. Thus, under section 1610 of the Omnibus Budget Reconciliation Act of 1981, P.L. 97-35, 95 Stat. 357, any ODS operator, for a one-year period, was eligible to receive ODS on vessels that were to be constructed, reconstructed, or modified in foreign yards. Similarly, section 134 of the Continuing Resolution, 1984, P.L. 98-151, 97 Stat. 964, made eligible for ODS only newly-acquired foreign-built vessels for which purchase options were executed prior to November 16, 1983.

The reason for the permissions given in 1981 and 1983 was stated over and over again as the necessity for ship replacement by subsidized operators, in view of the restrictions of their existing subsidy contracts and the lack of any CDS funds which would enable them to satisfy those contracts, replace vessels, and modernize their fleets in U.S. shipyards. Not one of those rationales apply to S. 2510, which is for the benefit of a presently unsubsidized operator, and does not relate to ship replacement, modernization, or contract restrictions.

Our second concern relates to the protections in the current law for operators of purely domestic services, namely § 805(a) of the Merchant Marine Act, 46 U.S.C. § 1223(a). That section provides that any person operating in domestic service has a right to a hearing before the Secretary of Transportation which protects that domestic operator against competition from a subsidized line. In the event this special bill is passed, there must be no implication of any waiver of any of the provisions of section 805. Thus if Sea-Land does become a subsidized operator, under the present law it would have to pass the section 805 test to continue its domestic operations. This bill must make it absolutely clear that any special consideration given to put the D-9s in the same legal situation in which they would be had they been built in American shipyards does not remove the fundamental protections accorded unsubsidized operators by section 805.

Indeed, Mr. Joseph F. Abely, Jr., formerly Sea-Land's Chief Executive Officer, testified before the Subcommittee of Merchant Marine of the House Committee on Merchant Marine & Fisheries on May 1, 1986 regarding the necessity of maintaining the status quo regarding section 805 when giving additional rights to subsidized operators on vessels built in foreign shipyards. See Maritime Promotion: Hearing Before the Subcomm. on Merchant Marine of the Comm. on Merchant Marine and Fisheries, House of Representatives, 99th Cong., 2d Sess. 61 (1986) ("1986 House Hearings"). Sea-Land should be no less concerned now that a bill which grants its vessels only the right to receive ODS does not vitiate in any way the protections of section 805.

Finally, we wish to register unease with the approach reflected in this bill which we think undermines the struggle in which our industry and this Congress has engaged for the past eight years, that is, finding a solution, or at least an approach, to the dilemmas faced by United States shipyards, subsidized and unsubsidized operators, and all the working people involved in these industries, so as to create a resurgent United States merchant marine industry. Granting exemptions from the build-U.S. requirement for one company for twelve eight-year old ships undermines that joint effort, and threatens the promise of fair treatment and equality to which all segments of the merchant marine are entitled. Indeed, it is ironic that Sea-Land, which testified at length concerning both the dangers of awarding operating subsidy for ships built abroad, and of treating subsidized operators better than unsubsidized operators, should be the

recipient of such special congressional favor. In 1983, while testifying before the Senate Subcommittee of Merchant Marine, Mr. Charles Hiltzheimer, then Sea-Land's Chairman and Chief Executive Officer, told that subcommittee:

". . . if the subsidized companies are going to have authority to build abroad, utilizing their CCF funds or not, we would question the justification for continued ODS payments on their new foreign-built, cost-efficient vessels. . . . Our reservation focuses on the real and continuous need for OD[S] payments on modern, cost-efficient, foreign built vessels."

Maritime Administration Reauthorization: Hearing Before the Subcom. on Merchant Marine, Comm. on Commerce, Science, and Transportation, U.S. Senate, 98th Cong., lst Sess. 67 (1983). Three years later, Mr. Abely stated: "We seek real equality. By that, I do not mean an illusion of equality which creates two tiers, where, on the top tier, current ODS contractors would continue to exhaust federal ODS funds and, on a newly created lower tier, new ODS contractors would be relegated to dividing the leftovers—if any." 1986 House Hearings, suora, at 49. And later he said: "I said at the outset of my testimony that there must be equality in any reform of the ODS system, and that the present system places Sea-Land at a disadvantage. The following chart shows that disadvantage by comparing the financial results of subsidized [lines] with unsubsidized Sea-Land in 1984. . . ." Id. at 59.

At the time Mr. Abely made those remarks, Sea Land was an unaffiliated corporate entity operating ?a fleet of 56 container-ships, of which 30 are registered in the U.S. and over 100,000 containers in the U.S. domestic and foreign commerce." Liner Development Act of 1986: Hearing Before the Subcomm. on Merchant Marine of the Comm. on Commerce, Science and Transportation, U.S. Senate, 99th Cong., 2d Sess. 67 (1986). Later in May 1986, Sea-Land was purchased by CSX Corporation, a corporation with $12.7 billion in assets and $6.3 billion in revenue for fiscal year 1986. CSX 1986 Annual Report at 1. In the past year, Sea Land has purchased from United States Lines, fleet the 12 ECON ships and 10 other Sea-Land vessels, basically doubling its carrying capacity. The 10 vessels just referred to were built in United States yards and are eligible for subsidy if Sea-Land becomes a subsidized operator, which now appears to be its intention. Given Sea-Land's extraordinary increase in size following the demise of United States Lines, and its ownership by a multi-billion dollar corporation with its own transportation network, we would think that the Congress would want to consider very carefully the ramifications of a bill specifically designed for this one steamship company. Such consideration appears especially warranted after the Congress has searched for so many years for a philosophical approach that embraces all of the varied segments of the United States merchant marine in order to foster a competitive and healthy industry.

It is our hope that Sea-Land believes as fervently in equality at this time as it did when it compared its profits unfavorably to those of subsidized lines just two years ago. In any event, we appreciate the opportunity to register with this Committee our concern regarding the general philosophy of the specific issues presented by S. 2510.

Senator BREAUX. Thank you,. Mr. Stocker? I am not sure if you belong on this panel, or that panel, for that matter. We do not have a separate panel.

STATEMENT OF JOHN J. STOCKER, PRESIDENT, SHIPBUILDERS COUNCIL OF AMERICA

Mr. STOCKER. Actually, Mr. Chairman, I am quite delighted for once to be in agreement with some of my friends from the U.S flag operating community. They are nice people to go to lunch with, though.

Mr. Chairman, thank you very much. My name is John Stocker, I am President of the Shipbuilders Council of America, which is the trade association for the shipbuilding and ship repair industry of the United States. I will not detail for you, for the umpteenth time, the decline in the U.S. shipbuilding industry. We have been here before to outline that sad tale for you.

I would like to add, however, a couple of comments on the fact that, as far as we are concerned, this decline has been generated by the collapse of the commercial shipbuilding market in the United States. And it is directly attributable to the fact that we are forced to compete without benefit of subsidy or any aid against foreign shipyards that receive heavy infusions of support, either directly or indirectly from their governments.

I might add that since the 1981 decision to cancel funding for the CDS program, that U.S. flag operators have continued to receive the advantages of construction differential subsidy. They have simply gotten it from foreign governments rather than the U.S. government.

Now I would like to turn to S. 2510, to indicate why the Shipbuilders Council opposes this measure. Section 601 of the Merchant Marine Act of 1936 sets forth certain conditions precedent before the Secretary of Transportation may grant an application submitted by private operator.

One such condition is that the vessel or vessels covered by the application must have been built in the United States. The only exception to this requirement was a temporary build-foreign waiver continued in the Omnibus Budget Reconciliation Act of 1981, and some additional special interest legislation enacted in the early 1980s.

Prior to the expiration of these waivers, the Maritime Administration approved the construction and the conversion of approximately 44 ships in foreign shipyards. An additional six vessels were permitted to be acquired abroad, pursuant to the amendment to the continuing resolution for fiscal year 1984, for which both American President Lines and Lykes Brothers Steamship Company, Incorporated were the direct beneficiaries.

These decisions, by the way, Mr. Chairman, cost my industry well over 14,000 direct production jobs. S. 2510 can likewise be labeled special interest legislation in that only one private company would derive any benefit from its enactment.

Only Sea-Land satisfies the description of "an operator of United States flag liner vessels which has taken delivery from a United States shipyard of United States built liner vessels that were introduced into service two years preceding the date of enactment of this Act." If Congress continues to pass piecemeal exceptions to existing law, a dangerous precedent will be set.

The vessels covered by the legislation are 12 foreign-built container ships owned and operated by Sea-Land. Japanese shipyards constructed ten of the D-9J ships while the other two were built in South Korean shipyards.

All of the ships were constructed in 1979 and 1980 and each can carry 2,500 TEU. The Shipbuilders Council questions whether the enactment of special interest legislation is the proper way to effectuate maritime revitalization and reform. We think not. Maritime reform legislation should seek to address the challenges and problems confronting all segments of the industry, not just a single company.

The Subcommittee should not be mislead by the fact that S. 2510 only makes the twelve D-9J container ships eligible for ODS. A presidential election is coming up in November. Administrations do change. Indeed, the one certitude in domestic politics is that there will be a new administration next January.

The policy of the present administration not to enter into new ODS contracts with private operators could be reversed within six months. This bill can be likened to the proverbial nose of the camel under the tent.

What then could this legislation cost the Federal taxpayer? Sea-Land currently deploys 12 container ships in the trans-Pacific trades, and has publicly stated that the vessels will most likely remain in that service. One of Sea-Land's major competitors in the trans-Pacific trades is APL.

Unlike Sea-Land, APL receives ODS payments of approximately $66 million for its fleet of 23 liner vessels according to press accounts. Simple mathematics converts this subsidy into about $2.9 million per vessel.

Since both Sea-Land and APL face the same foreign competition in the Pacific, it is safe to assume a more or less identical subsidy for both fleets. Thus, Sea-Land could receive an annual benefit of approximately $35 million.

As indicated earlier, the D-9Js were built overseas in 1979 and 1980. In other words, the container ships are approximately eight years old or, phrased differently, they have about 17 years remaining on their economic life.

Viewed in this light, the potential impact on the Federal Treasury could be in the neighborhood of $592 million dollars in constant dollars, assuming that the next Secretary of Transportation concluded a longterm ODS contract with Sea-Land.

In short, the Shipbuilders Council believes S. 2510 is special interest legislation which is potentially very costly to the taxpayer and we strongly oppose its enactment. It is time for both the Congress and the Administration to focus on the problems of the entire industry, rather than chipping away at current law for the economic advantage of one particular company.

Mr. Chairman, that concludes my oral statement.

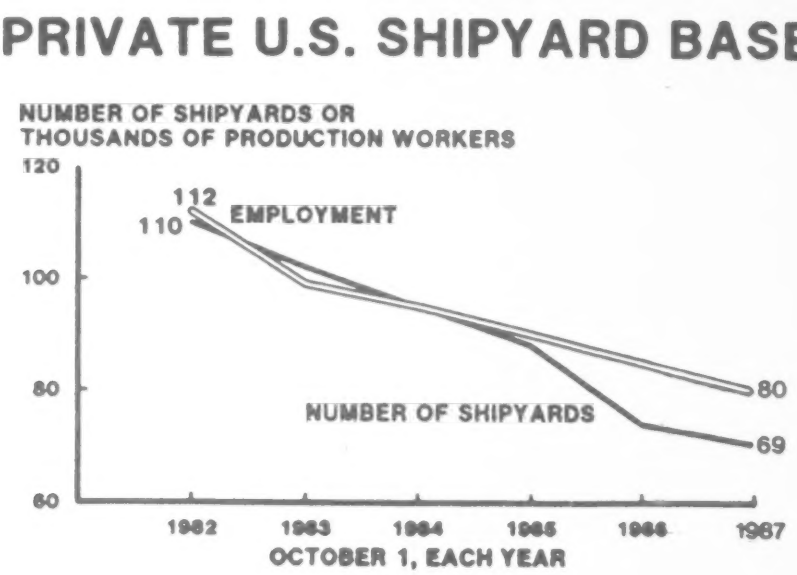
[The statement follows:]

STATEMENT OF JOHN J. STOCKER, PRESIDENT, SHIPBUILDERS COUNCIL OF AMERICA

Mr. Chairmam, members of the Subcommittee, I am John J. Stocker, President of the Shipbuilders Council of America. On behalf of the Council—the national trade association representing the principal domestic shipbuilders, ship repairers, and the vendors of materials and service to those industries—I appreciate this opportunity to express our views on S. 2510, legislation that would make 12 foreign-built, U.S.-flag liner vessels eligible to participate in the Operating-Differential Subsidy (ODS) program authorized by Title VI of the Merchant Marine Act of 1936. The Council represents approximately 95 percent of the work force engaged in shipbuilding and ship repair in the United States.

Before commenting directly on the merits of this legislation, I would like to present to you a short overview of the status of the shipbuilding industrial base in the United States in an effort to explicitly demonstrate the crisis that this industry faces. This overview is quite similar to that which I outlined to you in January of this year. Indeed, the picture only grows darker.

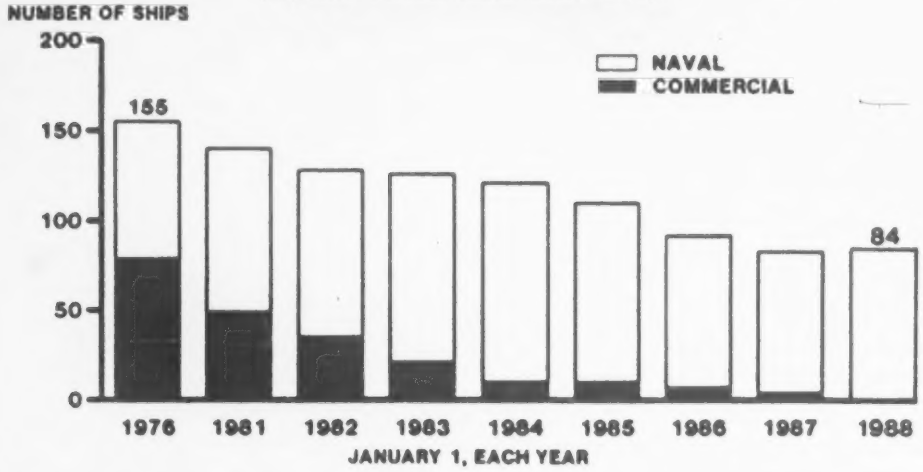
Based on the impetus that the Reagan Administration has given to naval shipbuilding and the drive to a 600-ship Navy, it would be reasonable to assume that this industry is fully employed and working to capacity. Unfortunately, this assumption is not in accord with reality. In fact, as you see from the following chart, the industry has suffered a precipitous decline since October 1982:



These figures represent both the shipbuilding and ship repair segments of the industry and reflect a 37 percent decrease in the number of shipyards and a 29 percent reduction in production workers in just five short years. Absent a dramatic turnaround, the Council fully expects this decline to continue. The Council is aware of at least eleven shipyards in the nation operating under the protection of Chapter 11 of the Federal Bankruptcy Code.

The proximate cause for this decline has been the collapse of the commercial shipbuilding market in this country and the near complete dependence on the Navy as the industry's only customer. Over 95 percent of all new construction and ship repair is performed by the industry for the United States Navy. The collapse in commercial shipbuilding is directly attributable to the uneven playing field that U.S. industry must compete on with foreign shipyards in the international market. U.S. yards are forced to compete without aid or subsidy against foreign yards that receive heavy infusions of support, either directly or indirectly. The next chart graphically presents the stark reality of the steady attrition of this market:

NUMBER OF NEW COMMERCIAL AND NAVAL SHIPS UNDER CONSTRUCTION OR ON ORDER IN U.S. PRIVATE SHIPYARDS (1,000 TONS AND LARGER)



On November 9, 1987, the last oceangoing merchant ship under construction in a U.S. shipyard was delivered to Sea-Land Service, Inc. (Sea-Land) by Bay Shipbuilding Corporation, Strugeon Bay, WI. No new orders for commercial vessels have been placed since 1984 or are expected in the near term. The only viable business opportunity the Council is aware of is the proposal of Matson Navigation Company to construct two new containerships and a container barge for its West Coast/Hawaii service.

Now, I would like to turn to S. 2510, the subject of today's hearing, to indicate why the Shipbuilders Council opposes this measure.

Section 601 of the Merchant Marine Act of 1936 sets forth certain conditions precedent before the Secretary of Transportation may grant an application for ODS submitted by a private operator. One such condition is that the vessel or vessels covered by the application must have been "built in the United States." The only exception to this requirement was a temporary build/foreign waiver contained in the Omnibus Budget Reconciliation Act of 1981 and some special interest legislation enacted in the early 1980s.

Prior to the expiration of the build/foreign waiver, the Maritime Administration approved the construction and the conversion of approximately 44 ships in foreign shipyards. An additional six vessels were permitted to be acquired abroad pursuant to the amendment to the Continuing Resolution for fiscal year 1984. American President Lines, Ltd. (APL) and Lykes Bros. Steamship Co., Inc. were the direct beneficiaries of that special interest legislation.

S. 2510 likewise can be labeled special interest legislation in that only one private company would derive any benefit from its enactment. Only Sea-Land satisfies the description of "an operator of United States-flag liner vessels which has taken delivery from a United States shipyard of new United States-built liner vessels that were introduced into service two years preceding the date of enactment of this Act." If Congress continues to pass piecemeal exceptions to existing law, a dangerous precedent will be set.

The vessels covered by the legislation are 12 foreign-built containerships owned and operated by Sea-Land. Japanese shipyards constructed ten of D–9J ships while the other two were built in South Korean shipyards. All of the ships were constructed in 1979 and 1980 and each can carry 2,500 TEU. The Shipbuilders Council questions whether the anactment of special interest legislation is the proper way to effectuate maritime revitalization and reform. We think not. Maritime reform legislation should seek to address the challenges and problems confronting all segments of the industry, not just a single company.

The Subcommittee should not be misled by the fact that S. 2510 only makes the 12 D–9Js containerships eligible for ODS. A presidential election is coming up in

November: Administrations do change. Indeed, the one certitude in domestic politics is that there will be a new Administration next January. The policy of the present Administration not to enter into new ODS contracts with private operators could be reversed within six months. This bill can be likened to the proverbial "nose of the camel under the tent." What then could this legislation cost the federal taxpayer?

Sea-Land currently deploys the 12 containerships in the trans-Pacific trades and has publicly stated that the vessels will most likely remain in that service. One of Sea-Land's major competitors in the trans-Pacific trades is APL. Unlike Sea-Land, APL receives ODS payments of approximately $66 million for its fleet of 23 liner vessels, according to press accounts. Simple mathematics converts this subsidy into about $2.9 million per vessel. Since both Sea-Land and APL face the same foreign competition in the trans-Pacific, it is safe to assume a more-or-less identical subsidy for both fleets. Thus, Sea-Land could receive an annual benefit of $34.8 million.

As indicated earlier, the D-9Js were built overseas in 1979 and 1980. In other words, the containerships are approximately eight years old, or phrased differently, they have about 17 years remaining on their economic life. Viewed in this light, the potential impact on the federal treasury could be in the neighborhood of $591.6 million in constant dollars assuming the next Secretary of Transportation concluded a long-term ODS contract with Sea-Land.

In summary, the Shipbuilders Council believes S. 2510 is special interest legislation, which is potentially very costly to the taxpayer, and we strongly oppose its enactment. It is time for the Congress and the Administration to focus on the problems of the entire maritime industry, rather than chipping away at current law for the economic advantage of one particular company.

Mr. Chairman, I will attempt to answer any questions that you or the members of the Subcommittee may have.

Senator BREAUX. Thank you, Mr. Stocker, and everybody on the panel for being with us.

Mr. Rhein, among other things in your statement, you point that it is really a special single shot approach to solving the problems in the maritime industry, and that you support a comprehensive review and suggestions as to helping everybody.

But your company has 14 foreign-built vessels that were made eligible for ODS subsidy by special legislation on an appropriations bill without the subject or benefit of any hearing. How is that situation different from what this hearing today is about?

Mr. RHEIN. Thank you, Senator. Just to clear the record, the 14 ships that you refer to were not all built under special legislation. Number one, three of those ships were built in American shipyards, in Avondale. Number two, four of those ships are chartered from Lykes Lines, we did not build them.

Senator BREAUX. What is the number, then, that were made eligible?

Mr. RHEIN. Well, two of them were built under special legislation which was a bill introduced by Lykes Lines in 1983, which we hooked on to. The 1981 bill was not special interest legislation; it was a broad piece of legislation that was available to any subsidized carrier or any carrier that applied for an ODS contract.

Senator BREAUX. The chart that I have is the reason; maybe I am misreading. The chart says that you have 14 ODS-qualified foreign-built or rebuilt vessels.

Mr. RHEIN. That is incorrect. We have 11.

Senator BREAUX. And of those 11, how many were made eligible for ODS assistance that you piggybacked on.

Mr. RHEIN. Two of them were piggybacked on the Lykes Lines legislation of 1983, which was special interest legislation. The other nine were through the broad window in 1981 which was available to everybody.

Senator BREAUX. So, how then, limiting it down to two? What is the difference, other than the fact that this is for 12, yours was for two?

Mr. RHEIN. Ten.

Senator BREAUX. That is a very telling answer, because what you are saying then is there is no difference in principle from what Sea-Land is requesting today, other than the fact they are asking for ten more than you did.

Mr. RHEIN. That is a facetious answer, and I apologize for that. The essence of issue is that at that time we had no alternative to building ships. As you may recall, Senator, the CDS funds were shut down in 1980 or 1981. Consequently, there was no way that we could build any additional ships. It is the same dilemma we face today.

Sea-Land, on the other hand, was not interested in an ODS contract when it was offered and available to them, and it was their decision and we respect that. In the meantime they have fully modernized their fleet to the point that they are happy with it.

And now that they have their fleet in position, are now coming in and asking for that fleet to be cleansed for ODS. I see no parallel whatsoever.

Senator BREAUX. Would they not have the same argument to tell this Committee if I were to ask them the question, that they have no alternative of building in a U.S. yard now, because we do not have any CDS available today, as you did not have back in the early 1980s?

Mr. RHEIN. Well, Sea-Land has never opted to build in a U.S. yard and CDS was of no interest to them. Their whole strategy has been to build in foreign yards and be unencumbered from the restrictions that apply to ODS carriers, and the restrictions have been onerous, but nonetheless, those of us that have signed up for the program have lived with those restrictions faithfully and operated under the law that includes those restrictions.

Senator BREAUX. I want to get into that. I think they have built a ship, in Wisconsin, I believe.

Mr. RHEIN. That was not with CDS.

Senator BREAUX. Not with CDS, no.

On your testimony, you talk about the fact, from your prospective, that Sea-Land intends to receive the benefit of subsidy without subjecting itself to restrictions which normally accompany subsidies.

Now, that is not what I heard when they testified previously. They said that they intended that those ships that received ODS assistance, if Maritime approved any of it, would be operated by their company, chartered by their company, following the same rules and regulations that would accompany the granting of the ODS to these ships that they would, in fact, be chartering.

Therefore, they are testifying that they intend to operate those ships under the ODS restrictions, which you are saying is not the case.

Mr. RHEIN. Mr. Breaux, if they did testify to that, number one, I did not hear it; and number two, it is new information.

Senator BREAUX. We both heard the same thing. What is your interpretation of what they said?

Mr. RHEIN. My interpretation is that the charterer and the ODS holder, i.e. in this case Waterman, would abide by the restrictions in the law. That is entirely different from Sea-Land abiding by the restrictions in the law.

Senator BREAUX. Did you hear that same position coming from John Gaughan?

Mr. RHEIN. I think John Gaughan was a little stronger in his feelings, that he would require either one to live within those restrictions.

Senator BREAUX. Would your position on this legislation change if it were to be amended to require that Sea-Land, which is getting the benefits of the ODS, would be also required to follow the regulations of an ODS subsidy contract?

Would it make a difference?

Mr. RHEIN. Well, yes, it would make a difference, in that I think that is the appropriate thing to do. But it would not change our opposition to this bill, simply because the basic reason for our opposition to this bill is that it freezes the rest of the industry and their ability to modernize their fleet, expand the U.S. flag presence in the world trade, and to compete on an even, level playing field, with Sea-Land first of all, but not exclusively; with the foreign carriers.

As I pointed out in our chart, we have 14 ships that are considered modern. The other nine are irreplaceable. We have no authority, there is no law. There is no way that American President Lines or any of the other carriers can replace their existing fleet.

And we are not satisfied with the fact that we only have 14 ships that are modern and Sea-Land will have 24. It just seems to be contrary to the interests of the U.S. merchant marine that you would restrict carriers who have worked within the system, worked with the ODS system, not looked for loopholes in order to achieve their ends, to be frozen out from the ability to modernize their fleet. And that is where you have us today.

Senator BREAUX. Mr. Stocker, you accurately talk about the decline of American shipyards and oppose, on behalf of your clients, any effort to allow any subsidy to be given anyone who builds in a foreign shipyard.

I hear from some of the shipyards—I mean, Avondale is an example I am familiar with in Louisiana. A couple of weeks ago it ended up in a one-week period, I think, announcing three major Navy contracts. The articles in Louisiana in the papers down there proudly proclaimed that Avondale was going to have enough work to keep their yards operating in a healthy condition to the year 1997.

And those of us up here proudly made those announcements. I know Bath and Ingalls have a number of Navy contracts because they just beat Avondale for some, and I was trying to ensure that Avondale was treated fairly on those.

But it seems that some of the major shipyards that I am familiar with are doing an incredible amount of Navy work. Is that not correct?

You know, we keep saying how bad the condition is. We point to the fact that we have fewer shipyards. But we probably have fewer, more efficient shipyards who are, some of them, doing fairly large amounts of work with the Navy. Is that not correct?

Mr. STOCKER. Mr. Chairman, that is correct, that a few shipyards have benefited quite a lot from the Navy orders that have been placed with them. I think there have to be two generalized concerns, though.

One is that, despite the amount of money that has been put into the Navy shipbuilding program over the last six, seven years, we have still lost almost a third of our total employment here in the United States, which is a far greater rationalization of the industry than has occurred anyplace else in the world, including in Europe and Japan.

We have to ask ourselves then a second question as we see the industry concentrated in fewer yards that may be performing well under Navy contracts, but does that give us the kind of physical capacity, the needs that we have for facilities to sustain some kind of mobilization for a future war?

And that is the critical question that remains unanswered.

Senator BREAUX. Senator Inouye.

Senator INOUYE. Thank you very much. Most of the questions I would have asked, Mr. Chairman, have been asked by you. So I would like to make a clarifying statement.

As a member of this subcommittee, I did not oppose the 1981 amendment, nor the 1983 amendment. I think that is for the record.

Secondly, the 1981 and 1983 amendments were carried out as amendments to an appropriations bill and, as the Chairman pointed out, we did not have the benefit of hearings like this to discuss the pros and cons, and have witnesses testify for and against.

In the 1983 law, the precedent has been set. Some of you have indicated that this would be a precedent-setting bill. Well, we set a precedent. Sure, it is not—it is more ships.

There were six ships in the 1983 law. Senator Johnston of Louisiana submitted an amendment in which he very specifically called for the placement of four foreign-built ships to receive ODS—Lykes. He made no bones about it. And after that another amendment was proposed by my distinguished friend from California who is now opposing this measure, to benefit APL for two ships that were built and purchased, foreign-built.

Do you not think that set the precedent for this, Mr. Rhein?

Mr. RHEIN. Thank you, Senator. I think the circumstances are entirely different. We are faced today with a very, very clear need for industry action, particularly in the area of ship modernization of the American fleet.

And nothing that took place in 1983 precluded Sea-Land from modernizing their fleet. This action today will preclude the rest of us from modernizing our fleet. That is a very significant difference.

Senator INOUYE. But was that not an exemption to the law?

Mr. RHEIN. You would have to be the judge of that. If you say so, I assume that it is, sir.

Senator INOUYE. I gather that you do not need any replacement until 1994, am I correct?

Mr. RHEIN. I could not say that, sir. Depending upon market conditions and hopefully deregulation of trade routes, we might be interested in new ships at any time.

Senator INOUYE. But as of this moment?

Mr. RHEIN. I cannot commit to 1994. We might be interested in new ships next year, depending upon circumstances. Right now we cannot plan on any ships.

Senator INOUYE. What are you going to do with the ships that you bought from C.C. Wei?

Mr. RHEIN. The five ships that were built under the 615 authorities from C.C. Wei are in the process of being built at this time, Senator, and will be delivered by the end of this year. They will be operated in the Pacific.

Senator INOUYE. You do not think that there is any justification on the part of Sea-Land to seek the relief that you sought?

Mr. RHEIN. Senator, we have been clearly and vocally in support of Sea-Land not only being eligible for, but also receiving, ODS. The only qualification, the major qualification that we have added, is that we would like to see the entire industry deregulated in terms of their ability to build ships in the same way Sea-Land has. That is all we have asked.

And this legislation would foreclose on that option for the rest of the industry and, more specifically, for our company.

Senator INOUYE. If this measure becomes law, the application has to be made by Sea-Land. And if the application is made by Sea-Land to receive ODS for the twelve ships, would you voice an objection with MarAd?

Mr. RHEIN. Let me make sure I understand the question, sir. If this law is passed——

Senator INOUYE. And pursuant to the law Sea-Land makes an application with MarAd to receive ODS for the twelve ships. Would you object to that with MarAd?

Mr. RHEIN. Yes, sir.

Senator INOUYE. So you will have an opportunity to be heard?

Mr. RHEIN. Sir, I believe I am having an opportunity to be heard today.

Senator INOUYE. And has MarAd provided you relief by granting you flexibility that is not necessarily granted under the law, but as an exemption to the law?

Mr. RHEIN. MarAd, as far as I know, whatever they have granted us has been within the law. We have never initiated any special legislation or exemption activity on our own.

Senator INOUYE. What about the examples that I cited for the last panel?

Mr. RHEIN. The 1983 legislation was initiated by Lykes Brothers. I do not know who initiated the legislation in 1981, but it was not special legislation, as I understand it.

As I understand it, the Administration entered that piece of legislation into the hopper, and it was very broadly based. It was open to anybody.

Senator INOUYE. Recently you requested approval for foreign flag feeders?

Mr. RHEIN. Yes, sir.

Senator INOUYE. It was granted, was it not?

Mr. RHEIN. After six months of research and contemplation, and over the protest of Sea-Land.

Senator INOUYE. Did MarAd approved your use of foreign flag line haul vessels?

Mr. RHEIN. MarAd approved our use of foreign flag line haul vessels for a short period of time to cover drydocking of our fleet, again over the protests of Sea-Land.

Senator INOUYE. Will you be seeking authority to take advantage of the recent redesignation of trade routes to broaden them into trade areas?

Mr. RHEIN. Senator, if I may, I would like to clarify the answer to one of the earlier questions. On the application for foreign flag feeders, I might add that that authority is for a limited time. I believe it is five years. And it is subject to cancellation by MarAd at 90 days notice at any time.

So the authority that we received is not unencumbered.

In answer to your last question about the trade route authority, we are considering that form of an application now, but my understanding is that requires a section 605(c) hearing in order to implement. And those of us that are familiar with the 605(c) process in the Maritime Administration fully understand that that is a long term commitment.

We are not prepared to initiate that at this time, but we are constantly evaluating whether we should do that.

Senator INOUYE. Mr. Stocker, you are concerned that this type of bill would deny business to your shipyards. Do you believe that if these measures are not passed that these companies would build ships in American shipyards?

Mr. STOCKER. In the face of current international subsidy practices, it is most likely the case that they would not build in U.S. shipyards. This is why we have been making the argument, Senator, that both the Congress and the Administration have to look very seriously at the competition that we are facing internationally and try to approach maritime policy in a complete fashion, rather than in a piecemeal fashion.

Senator INOUYE. Well, I am with you. But I have joined with many of you in the past to try to get through legislation that would be comprehensive in nature. And as you know, with all the effort we have expended, we have not been successful.

However, in the meantime companies such as APL and Sea-Land and Lykes and Farrell and Waterman have suffered, which forced many of us to provide special legislation like this in 1981 and 1983 and on and on.

Otherwise, I think the industry would be in worse shape than it is today.

Mr. STOCKER. We can understand the dilemma, Senator. On the other hand, we would encourage our friends from the U.S. flag operating community to continue to attempt to work with us in approaching maritime policy from a comprehensive point of view.

As long as these efforts continue, we will continue to see the industry divided, and continual controversy will remain until we bring ourselves together and pursue some kind of comprehensive package in the future.

I might also add as a footnote, Senator, that we certainly look forward to Congressional and executive branch support in efforts to try to negotiate with our trading partners to do away with subsidy practices overseas, so we improve the environment for the international shipbuilding market.

Senator INOUYE. What are the chances of our succeeding in convincing our allies to do that?

Mr. STOCKER. Somewhat similar to the chances of succeeding on the agricultural subsidies.

Senator INOUYE. Which is nil.

Mr. JOHNSEN. Mr. Chairman, may I comment on several of the points that the Senator has made?

I think in relationship to S. 2510 as it pertains to the fact that other companies may have the same ability, if Sea-Land is able to purchase the subsidy rights from Waterman and Farrell and makes the deal with Lykes on a trade of subsidies, so that in effect there are no new applications being made—currently no new applications are being accepted by the Administration—you then find that the unsubsidized small operators such as ourselves—and you were making some comments with respect to APL and their problems, but they are already receiving $66 million in subsidy, whereas companies such as Crowley and ourselves have continued to have to draw back on our operations simply because we are unable to compete.

And I think when one considers that as an example Waterman has something like 40 sailing rights through the trade route 18 area and they are using 12, one questions whether or not some reapportionment of that on an administrative basis or on a Congressional policy basis may be part of what ought to be done here.

We too are not interested in piecemeal legislation, but we thought we had to put this amendment in in order to prevent extinction.

Thank you.

Senator INOUYE. Well, we could go on and on, Mr. Chairman. But I think the record is complete enough. I hope that after this hearing the committee will be able to sit and make some determination as to the resolution of this measure.

Senator BREAUX. I thank the Senator for his comments and questions.

Let me ask one other question. Someone had raised it with me, Mr. Stocker, knowing that we were having the hearing. The argument of your clients, the shipbuilding industry, is that we cannot compete internationally, for a wide variety of reasons, without some help from our government.

The person who was asking me the question said: Well, what about the other industries that are able to? The automobile industry, if you have three major companies here that have quite severe international competition and are doing fairly well and having record profits. The aircraft manufacturers and the aircraft industry in this country have been doing extremely well selling airplanes domestically and able to sell them in fact around the world.

And they are doing all of that without a CDS type of program for the construction of those products. Why cannot the shipbuilding industry?

I mean, these companies, they would point out to me, have high wages and safety standards and all of the things that I have heard from the shipbuilding industry that makes it more difficult to compete. Our airplane manufacturers have those same problems, our car manufacturers have those same obligations that they have to meet.

Why is it different with your industry?

Mr. STOCKER. Mr. Chairman, those are very, very good points, and let me just add in regard to the issue that I have raised about foreign subsidies. When we raise the issue of foreign subsidies and suggest that we should be negotiating with our trading partners to do away with subsidy practices, we in fact mean that, because we would like to be able to enter into an unencumbered, undistorted marketplace, and compete on a level playing field with our foreign competitors.

Let me suggest that that may mean government programs of some type that are not related to the way we ran the CDS program back in the seventies. And I cite as examples of the kinds of things that you can do exactly in the areas that you mentioned.

The automobile manufacturers were able to, through the dint of their arguments on international trade, to get restraints placed on the importation of Japanese automobiles. That allowed them some breathing space so that they could in fact reorganize plant and re-enter the international market in a way that brought new capital, new technologies, new training of their workers, to bear in the competition in the international arena.

Let me suggest to you that in the case of the aviation community that for years they were able to use interest rate subsidies provided by the Export-Import Bank. And in addition to that, it is now the aviation community that is raising issues associated with the subsidy practices of European governments in regard to the construction of Airbus.

So what we have seen in the past is some very creative and innovative approaches by these industries in looking at the international market. And let me suggest to you that shipbuilders, who tend to be traditional and conservative, are now beginning to look at the actions of

these industries and saying to themselves, perhaps there is some room for maneuver insofar as our industry is concerned.

And we are looking at those things very, very closely. We at the Council have recently formed the office of export assistance. We are working with a number of groups to look at some potential remedies that we may have under the international trade statutes that are on the books right now.

So we have not closed off any options and we have not come back to you and said that what we would like to see is a reinstitution of CDS. What we are simply arguing at this point is a recognition and admission that we are facing unfair trade practices in the international arena and that there are some creative ways of addressing that in the future.

Senator BREAUX. I appreciate that response.

I want to thank all of the members of the panel who have been with us.

Senator INOUYE. Mr. Chairman, if I may just add to Mr. Stocker's statement. The airline manufacturers have also taken advantage of benefits under the Exim Bank law, which the shipping people have not even touched yet.

Mr. STOCKER. That is quite correct.

Senator BREAUX. The point I would only add, that is talking about the export market. They are selling a heck of a lot of airplanes domestically. They are selling a heck of a lot of cars domestically.

We are not doing that in the shipping industry. I am just talking about the domestic market. We cannot sell ships domestically, let alone being able to export them to countries that would be buying from us. We have got a double problem.

Mr. STOCKER. And I would only add, Mr. Chairman, very briefly that we are seeing some examples of penetration of the U.S. domestic aviation market by foreign producers.

Senator BREAUX. Gentlemen, we thank you much. I think that you all have outlined your concerns very well, and certainly will be given every consideration.

This will conclude our hearing today. I thank all of those in attendance.

[Whereupon, at 1:20 p.m., the subcommittee was adjourned.]

O

89-377 (96)